

District of Columbia Code

1981 Edition



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DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA
(EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE
DISTRICT OF COLUMBIA BY REASON OF BEING
GENERAL AND PERMANENT LAWS OF THE
UNITED STATES), AS OF DECEMBER 31,
1993, AND NOTES TO DECISIONS
THROUGH DECEMBER 31, 1993

VOLUME 3A

1994 REPLACEMENT

TITLE 4—POLICE AND FIRE DEPARTMENTS
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS

Prepared and Published Under Authority of the Council of the District
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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

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4. Police and Fire Departments.
5. Building Restrictions and Regulations.
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*Title has been enacted as law.

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TITLE 4. POLICE AND FIRE DEPARTMENTS.

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§ 4-101. Police District created.

The District is constituted a police district, to be called "The Metropolitan Police District of the District of Columbia." (R.S., D.C., § 321; 1973 Ed., § 4-101.)

Cross references. — As to territorial area, see §§ 1-101 and 4-103. As to Metropolitan Police assistance to United States Secret Service Uniformed Division, see § 1-1131.1. As to demonstrations, assemblages and marches relating to federal government, and reimbursement of costs incurred by District, see § 1-1132.

Power to sue and be sued. — The duties and powers of the Metropolitan Police, as set forth in § 4-101 et seq., contain no provision for it to sue or be sued. *Hinton v. Metropolitan Police Dep't*, 726 F. Supp. 875 (D.D.C. 1989).

Members of the Metropolitan Police are not employees of the United States, but are employees of the municipal corporation of the District of Columbia. *Wham v. United States*, 81 F. Supp. 126 (D.D.C. 1949), rev'd on other grounds, 180 F.2d 38 (D.C. Cir. 1950).

Liability for unlawful arrests. — Evidence that the Metropolitan Police Department is un-

der a general duty to enforce the laws of the United States within the District, that its Chief had furnished policemen to keep order during demonstrations, and that the Capitol Police force was under the direction of United States officials, demonstrates that the District of Columbia could be held liable for unlawful arrests of demonstrators. *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161, rehearing denied, 439 U.S. 886, 99 S. Ct. 234, 58 L. Ed. 2d 201 (1978).

Cited in *Washington Free Community, Inc. v. Wilson*, 334 F. Supp. 77 (D.D.C. 1971), aff'd, 484 F.2d 1078 (D.C. Cir. 1973); *Tatum v. Morton*, 402 F. Supp. 719 (D.D.C.), supplemental opinion, 386 F. Supp. 1308 (D.D.C. 1974), remanded, 562 F.2d 1279 (D.C. Cir. 1977); *Washington Mobilization Comm. v. Cullinane*, 566 F.2d 107 (D.C. Cir. 1977).

§ 4-102. Federal control of Metropolitan Police in emergencies.

(a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of 48 hours unless the President has, prior to the expiration of such period, notified the Chairmen and ranking minority members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of 30 days following the date on which such services are first made available, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the 30-day period following the date on which Congress first convenes following such adjournment, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to

subsection (a) of this section shall extend for any period in excess of 30 days, unless the Senate and the House of Representatives enact into law a joint resolution authorizing such an extension. (1973 Ed., § 4-101a; Dec. 24, 1973, 87 Stat. 830, Pub. L. 93-198, title VII, § 740; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(i), (j).)

Cross references. — As to Metropolitan Police assistance to United States Secret Service Uniformed Division, see § 1-1131.1. As to demonstrations, assemblages and marches relating to federal government, and reimbursement of costs incurred by District, see § 1-1132.

Effective period of § 131 of Public Law 98-473. — Section 131(n) of Public Law 98-473

provided that the provisions of this section shall be effective hereafter without limitation as to fiscal year, notwithstanding any other provision of the joint resolution. Public Law 98-473 was approved October 12, 1984.

Definitions applicable. — The definitions in § 1-202 apply to this section.

§ 4-103. Boundaries and subdivision of Police District.

The Metropolitan Police District of the District of Columbia shall be coextensive with the District of Columbia, and shall be subdivided into such police districts and precincts as the Council of the District of Columbia may from time to time direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056; 1973 Ed., § 4-102.)

Cross references. — As to territorial area, see § 1-101.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(89) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of

Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-104. Appointments; assignments; promotions; applicable civil service provisions; vacancies.

The Mayor of said District shall appoint to office, assign to such duty or duties as he may prescribe, and promote all officers and members of said Metropolitan Police force; provided, that all officers, members, and civilian employees of the force except the Chief of Police, the Assistant and Deputy Chiefs of Police, and the inspectors, shall be appointed and promoted in accordance with the provisions of §§ 1101 — 1103, 1105, 1301 — 1303, 1307, 1308, 2102, 2951, 3302 — 3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of Title 5, United States Code, and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States; provided further, that the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force

and shall be returned to the rank of captain when the Mayor so determines: Provided further, that privates of class 1, if found efficient, shall serve 1 year on probation, privates of class 2 shall serve 2 years subsequent to service in class 1, and privates of class 3 shall include all those privates who have served efficiently 3 or more years. In order that the full complement of the Metropolitan Police force may at all times be maintained, as authorized by law, the Mayor of the District of Columbia is authorized, when vacancies occur in classes 2 and 3 of said Metropolitan Police force, which cannot be filled by promotion, to appoint privates in class 1 equal in number to the positions vacated in said classes 2 and 3; and the respective salaries specifically provided for such vacant positions may be reduced to pay the salaries of the privates so appointed to class 1. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056; May 26, 1908, 35 Stat. 296, ch. 198; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1; 1973 Ed., § 4-103.)

Cross references. — As to appointment of Metropolitan Police to United States Secret Service Uniformed Division, see 3 U.S.C. § 203. As to number of privates and officers to be appointed, see § 4-107. As to appointment of special policemen for protection of specific private property, see § 4-114. As to removal of policemen, see §§ 4-117 and 4-118. As to resignation of policemen, see § 4-121. As to special police upon emergency, riot, pestilence, invasion, instruction, public election, ceremony, or celebration, see § 4-130. As to appointment of Property Clerk, see § 4-152. As to United States Park Police, see §§ 4-201 to 4-205. As to police receiving awards for meritorious service in line of duty given preference in promotions, see § 4-703. As to seniority of policemen serving in armed forces, see §§ 4-1102 and 4-1103. As to policemen's exclusion from unemployment compensation, see § 46-101.

Section references. — This section is referred to in § 1-633.3.

References in text. — 5 U.S.C. § 3306, referred to in the second proviso of the first sentence, was repealed February 10, 1978, 92 Stat. 25, Pub. L. 95-228, § 1. 5 U.S.C. § 3319 was repealed October 13, 1978, 92 Stat. 1149, Pub. L. 95-454, § 307. 5 U.S.C. § 7152 was transferred October 13, 1978, 92 Stat. 1216, Pub. L. 95-454.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — The Office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that Office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer." The Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives." Each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police."

Inferences of racial discrimination negated. — The affirmative efforts of the Police Department to recruit black officers, the changing racial composition of the recruit classes, and the relationship of the written test of verbal skill to the training program negates any inference that the Department has discriminated on the basis of race notwithstanding the disproportionate impact of the test on black applicants. *Washington v. Davis*, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 597 (1976).

Competency test not discriminatory. — A test which was given to applicants for employment as police officers to test verbal ability, vocabulary, reading and comprehension, was reasonably and directly related to the police recruit training program and was not designed to discriminate against qualified blacks. *Davis*

v. Washington, 348 F. Supp. 15 (D.D.C. 1972), rev'd, 512 F.2d 956 (D.C. Cir. 1975), 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976).

Burden to disprove prima facie discrimination. — Where there was a poorer statistical showing of blacks than whites who passed multiple-choice critical-incident test of judgment and supervisory competence used in connection with promotion from patrolman to sergeant in Police Department, prima facie case of discrimination was established, and burden then

shifted to government employer to justify test by establishing that it was job-related. *Davis v. Washington*, 352 F. Supp. 187 (D.D.C. 1972).

Cited in *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978); *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *Mosrie v. Barry*, 718 F.2d 1151 (D.C. Cir. 1983); *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988).

§ 4-105. Oath of office.

The Mayor of the District of Columbia shall require an oath of office to be taken by the members of the police force, and shall make suitable provisions respecting the same, and for the registry thereof, and such oath may be taken before said Mayor, who is empowered to administer the same. (R.S., D.C., § 351; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-104.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-106. Probation period.

No person shall receive a permanent appointment who has not served the required probationary period, but the service during probation shall be deemed to be service in the uniformed force if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement, promotion, retirement, and pension in accordance with existing law. If at any time during the period of probation, the conduct or capacity of the probationer is determined by the Mayor of the District of Columbia, or his designated agent, to be unsatisfactory, the probationer shall be separated from the service after advance written notification of the reasons for and the effective date of the separation. The retention of the probationer in the service after satisfactory completion of the probationary period shall be equivalent to a permanent appointment therein. (Aug. 31, 1918, 40 Stat. 938, ch. 164; May 27, 1968, 82 Stat. 145, Pub. L. 90-320, § 6; 1973 Ed., § 4-105.)

Cross references. — As to proceedings for removal of policemen for cause, see §§ 4-117 and 4-118. As to discharge for inefficiency, see § 4-401.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Govern-

mental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Discharge based on conduct otherwise protected by the First Amendment cannot be sustained unless the conduct impaired the employee's ability to perform his job or interfered with the operation of the agency he served. *Tygett v. Barry*, 627 F.2d 1279 (D.C. Cir. 1980).

Cited in *Cox v. District of Columbia*, 821 F. Supp. 1 (D.D.C. 1993).

§ 4-107. Composition of force; duties of positions.

The said Metropolitan Police force shall consist of 1 Chief of Police, who shall continue to be invested with such powers and charged with such duties as is provided by existing law; and also of 1 Assistant Superintendent with the rank of inspector; 4 surgeons for the Police and Fire Departments; 3 inspectors; 10 captains; 12 lieutenants, one of whom shall be Harbor Master; and such number of sergeants; and privates of class 3; privates of class 2; privates of class 1; mounted inspectors, captains, lieutenants, sergeants, and privates on horses and bicycles, and such others as said Mayor may deem necessary within the appropriations made by Congress; provided, that the inspectors shall perform the duties required on June 8, 1906, of captains in the force, that the captains shall command police precincts and perform such duty or duties in connection therewith as the laws and regulations of the said Mayor may prescribe. The Chief of Police shall be charged with the enforcement of all laws and regulations relating to the harbor, and employ the lieutenant, force, and means provided for this service in the execution of the duties appertaining thereto. The Metropolitan Police force shall consist of not less than 3,000 officers and members, in addition to the persons appointed as surgeons for the Metropolitan Police force, appointed as police matrons, or appointed as special privates pursuant to § 4-130, and in addition to any retired officer or member of the Metropolitan Police force called back into service pursuant to § 4-618(a). (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; Mar. 3, 1905, 33 Stat. 902, ch. 1406; June 8, 1906, 34 Stat. 221, ch. 3056; May 9, 1956, 70 Stat. 148, ch. 243, § 1; June 27, 1961, 75 Stat. 121, Pub. L. 87-60, § 1; 1973 Ed., § 4-106.)

Cross references. — As to police rules and regulations, see §§ 4-177 and 4-178. As to awards for meritorious service in line of duty, see § 4-701 et seq. As to administration of firearms control provisions by Chief of Police, see Chapter 23 of Title 6. As to report of adult abuse or neglect, see § 6-2503. As to wharves, see §§ 9-101 and 9-102. As to service of process issued by Superior Court, see § 16-703. As to permits to congregate near property of foreign governments, see § 22-1115. As to criminal

penalty for impersonating police officer, see § 22-1304. As to harbor regulations, see §§ 22-1701 to 22-1703a. As to assessment of tax against premises used for purposes of prostitution, see § 22-2720. As to issuance of license to carry pistol, see § 22-3206. As to permission to sell certain types of weapons to designated classes of persons, see §§ 22-3208, 22-3210 and 22-3214. As to copying of records of sales of certain weapons, see § 22-3210. As to designation of officer to take bonds and col-

lateral, see § 23-1110. As to detail of officer to assist Washington Humane Society in preventing cruelty to children and animals, see §§ 32-909 and 32-910. As to enforcement of Uniform Controlled Substances Act, see § 33-551 et seq.

Section references. — This section is referred to in §§ 1-603.1 and 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Mayor and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-107.1. Cadet program — Authorized; purpose; preference for appointment; appropriations.

(a) The Chief of the Metropolitan Police Department may establish a police officer cadet program for the purpose of instructing, training, and exposing interested persons, primarily young adults residing in the District of Columbia, to the operations of the Metropolitan Police Department and the duties, tasks, and responsibilities of serving as a police officer with the Metropolitan Police Department.

(b) A person successfully completing the required training and service in a cadet program established pursuant to this section shall be accorded full preference for appointment as a member of the Metropolitan Police Department or of the District of Columbia Fire Department, if the person shall have met all other requirements pertaining to membership in the chosen Department.

(c) There may be appropriated the funds necessary for the administration of this section. (Mar. 9, 1983, D.C. Law 4-172, § 2(a), (c), (d), 29 DCR 5745.)

Cross references. — As to funding and administration of police officer or firefighter cadet training programs, see § 31-2212.

Section references. — This section is referred to in §§ 4-107.2 and 4-319.

Legislative history of Law 4-172. — Law 4-172, the "Police Officer and Firefighter Cadet Programs Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982," was introduced in Council and assigned

Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

§ 4-107.2. Same — Rules.

The Mayor or the Mayor's designated agent may issue rules necessary for the implementation and operation of the cadet programs established pursuant to §§ 4-107.1 and 4-318. (Mar. 9, 1983, D.C. Law 4-172, § 6, 29 DCR 5745.)

Legislative history of Law 4-172. — See note to § 4-107.1.

§ 4-108. Assistant to inspector commanding detective bureau.

On and after June 20, 1942, the Mayor of the District of Columbia may assign to duty as assistant to the inspector commanding the detective bureau in the Metropolitan Police Department any officer or member of the Metropolitan Police force and, during the period of such assignment, the said officer or member shall hold the rank and receive the pay of a captain of police and shall be eligible for assignment, by the said Mayor, as chief of detectives. For the duration of such latter assignment such officer or member shall hold the rank and receive the pay of a Deputy Chief of Police. (June 20, 1942, 56 Stat. 374, ch. 427, § 1; 1973 Ed., § 4-106a.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-109. Age limits in original appointments.

The Council of the District of Columbia is authorized to determine and fix the minimum and maximum limits of age within which original appointments to the Metropolitan Police Department may be made. (Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4; 1973 Ed., § 4-107.)

Cross references. — As to age limits on original appointments to Fire Department, see § 4-303.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(90) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the

Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1979: The "Police Manual Amendment Act of 1979" (D.C. Law 3-32, Oct. 18, 1979, 26 DCR 778).

§ 4-110. Allowance for use of private motor vehicles by inspectors.

The Mayor of the District of Columbia is hereby authorized to pay to not more than 3 inspectors of the Metropolitan Police force who may be called upon to use privately-owned automobiles in the performance of official duties for each automobile an allowance not to exceed \$480 per annum. (June 25, 1947, 61 Stat. 179, ch. 145; 1973 Ed., § 4-108a.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-111. Detail of privates.

The Mayor of the District of Columbia is hereby authorized to detail from time to time from the privates of the police force such number of privates as may in his judgment be necessary for special service in the detection and prevention of crime, and while serving in such capacity they shall have the rank of sergeants in the force. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 3; 1973 Ed., § 4-110.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-112. Watchmen at Municipal Building.

Policemen shall not be detailed for duty as watchmen at the Municipal Building. (Mar. 3, 1909, 35 Stat. 689, ch. 250; 1973 Ed., § 4-111.)

Section references. — This section is referred to in § 1-633.3.

§ 4-113. Special policemen — Crossings and intersections; penalty for failure to stop car.

Repealed. May 10, 1989, D.C. Law 7-231, § 14a, 36 DCR 492.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 4-114. Same — Property of individual or corporation; compensation and regulation.

The Mayor of the District of Columbia, on application of any corporation or individual, or in his own discretion, may appoint special policemen for duty in connection with the property of, or under the charge of, such corporation or individual; said special policemen to be paid wholly by the corporation or person on whose account their appointments are made, and to be subject to such general regulations as the Council of the District of Columbia may prescribe. (Mar. 3, 1899, 30 Stat. 1057, ch. 422; 1973 Ed., § 4-115.)

Cross references. — As to removal of special policemen without cause or hearing, see § 4-117. As to police rules and regulations, see §§ 4-177 and 4-178. As to arrest powers, see § 23-582.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(91) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Purpose of special policemen. — A special policeman is appointed for the sole purpose of guarding the property of those who paid him for his services. *Klopfer v. District of Columbia*, 25 App. D.C. 41 (1905).

Uniform requirements for security officers amended. — Section 2 of D.C. Law 5-180 amended § 4.2 of the Regulation Establishing Standards For Certification And Employment For Security Officers, to remove the prohibition against security officers wearing uniforms with stripes, enacted December 1, 1974 (Reg. 74-31; 17 DCMR 2112.1).

Distinction from private citizen. — A special policeman's power of arrest is the sole factor which distinguishes the holder of a special police commission from a private citizen. *United States v. McDougald*, App. D.C., 350 A.2d 375 (1976).

Distinction between actions of private security guards and special police officers. — The courts have distinguished actions of private security guards from those of commissioned or deputized special police officers; although both are privately employed with a duty to protect the property of their employer, the special police officer or deputized officer is commonly vested by the state with powers beyond that of an ordinary citizen. *United States v. Lima*, App. D.C., 424 A.2d 113 (1980).

Agents. — Special police officers commissioned by the Mayor pursuant to this section are agents for purposes of the Fourth Amendment. *United States v. Foster*, 566 F. Supp. 1403 (D.D.C. 1983).

Limited duties and authority. — Special policemen do not have the general duties and broad authority of a policeman or law-enforcement officer in the ordinary sense of those terms. *Franklin v. United States*, App. D.C.,

271 A.2d 784 (1970), *aff'd*, 458 F.2d 861 (D.C. Cir. 1972).

Authority to arrest. — A special policeman commissioned under this section had the authority to make an arrest where he saw defendants take coats worth more than \$100. *Gaiter v. United States*, 413 F.2d 1061 (D.C. Cir. 1969).

A special police officer, who had been appointed under authority of this section, had authority to arrest the defendant for the misdemeanor of carrying a concealed weapon. *United States v. Dorsey*, 449 F.2d 1104 (D.C. Cir. 1971).

Policeman within meaning of § 22-3205. — A special police officer, who has been commissioned pursuant to this section, will be considered a policeman or law-enforcement officer within the meaning of § 22-3205 only to the

extent that he acts in conformance with the regulations governing special officers. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

Fourth Amendment restrictions on police conduct do not extend to private security officers. *United States v. Lima*, App. D.C., 424 A.2d 113 (1980).

Cited in *McKenzie v. United States*, App. D.C., 158 A.2d 912 (1960); *Franklin v. United States*, 458 F.2d 861 (D.C. Cir. 1972); *Lansburgh's, Inc. v. Ruffin*, App. D.C., 372 A.2d 561 (1977); *Cobb v. Standard Drug Co.*, App. D.C., 453 A.2d 110 (1982); *Alston v. United States*, App. D.C., 518 A.2d 439 (1986); *Shivers v. United States*, App. D.C., 533 A.2d 258 (1987); in *Woodward & Lothrop v. Hillary*, App. D.C., 598 A.2d 1142 (1991).

§ 4-115. General duties of Mayor.

It shall be the duty of the Mayor of the District of Columbia at all times of the day and night within the boundaries of said Police District:

- (1) To preserve the public peace;
- (2) To prevent crime and arrest offenders;
- (3) To protect the rights of persons and of property;
- (4) To guard the public health;
- (5) To preserve order at every public election;
- (6) To remove nuisances existing in the public streets, roads, alleys, highways, and other places;
- (7) To provide a proper police force at every fire, in order that thereby the firemen and property may be protected;
- (8) To protect strangers and travelers at steamboat and ship landings and railway stations;
- (9) To see that all laws relating to the observance of Sunday, and regarding pawnbrokers, mock auctions, elections, gambling, intemperance, lottery dealers, vagrants, disorderly persons, and the public health, are promptly enforced; and
- (10) To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title. The police shall, as far as practicable, aid in the enforcement of garbage regulations. (R.S., D.C., § 335; June 11, 1878, 20 Stat. 107, ch. 180, § 6; July 14, 1892, 27 Stat. 160, ch. 171; 1973 Ed., § 4-119.)

Cross references. — As to police power of Mayor, see §§ 1-315 and 1-319. As to jurisdiction over alley laid out in plats of subdivision, see § 1-923. As to federal control of Metropolitan Police in emergencies, see § 4-102. As to authorization of ordinances, rules and regulations, see §§ 4-106, 4-114, 4-117, 4-118, 4-128, 4-139, 4-141 and 4-144. As to enforcement of

harbor laws and regulations, see § 4-107. As to duty of police force to obey Chief of Police and Mayor, see § 4-122. As to policemen and Mayor as possessors of powers of common-law constables, see § 4-136. As to power of police to execute search or arrest warrant, see § 4-138. As to discriminatory laws not to be enforced, see § 4-139. As to arrests to be made known,

see § 4-141. As to detention of witnesses, see § 4-144. As to authority to search and arrest in certain cases, see § 4-145. As to prosecution of gaming houses and houses of prostitution, see §§ 4-145 and 4-146. As to disposal of garbage, see §§ 6-501 to 6-511. As to policing Capitol Grounds, see §§ 9-114 to 9-116 and 9-123. As to detention of mentally ill persons, see § 21-521 et seq. As to power and authority of police to arrest without warrant, see § 23-581.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Eckloff v. District of Columbia*, 135 U.S. 240, 10 S. Ct. 752, 34 L. Ed. 120 (1890); *Barrett v. Young*, 134 F. Supp. 106 (D.D.C. 1955); *Thornton v. Corcoran*, 407 F.2d 695 (D.C. Cir. 1969); *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976).

§ 4-116. Public buildings and grounds belonging to the United States.

The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia. (July 29, 1892, 27 Stat. 325, ch. 320, § 15; 1973 Ed., § 4-120.)

Cross references. — As to Executive Protective Service, see 3 U.S.C. §§ 202 to 208. As to United States Secret Service Uniformed Division, see 3 U.S.C. §§ 202 to 209. As to Capitol Police for Capitol Building and Grounds, see 40 U.S.C. §§ 206 to 215. As to United States Park Police, see § 4-201 et seq. As to regulation and control over public parks, playgrounds and reservations, see §§ 8-101 to 8-103 and 8-111 to 8-165. As to jurisdiction and control over Capitol Buildings and Grounds, see §§ 9-105, 9-108 to 9-116, and 9-123 to 9-126.

This section was assimilated by a subsequently enacted District unlawful entry statute. *Whittlesey v. United States*, App. D.C., 221 A.2d 86 (1966).

District could be held liable for unlawful arrests of demonstrators. *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161, rehearing denied, 439 U.S. 886, 99 S. Ct. 234, 58 L. Ed. 2d 201 (1978).

Criminal provisions applicable to all nonexempt federally-owned property. — The criminal provisions of the D.C. Code apply to all property owned by the United States in the District of Columbia unless such property is expressly exempt from coverage by Congress. *McEachin v. United States*, App. D.C., 432 A.2d 1212 (1981).

Cited in *ITEL Corp. v. District of Columbia*, App. D.C., 448 A.2d 261, cert. denied, 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932 (1982).

§ 4-117. Conduct of force; power to fine, suspend and dismiss; written charges; opportunity to be heard; removal without trial; amendment of charges.

In addition to the powers vested in them by law, the Council of the District of Columbia is hereby authorized and empowered to make and modify, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, under such penalties as the Council may deem necessary, all needful

rules and regulations for the proper government, conduct, discipline, and good name of said Metropolitan Police force; and said Mayor is hereby authorized and empowered to fine, suspend with or without pay, and dismiss any officer or member of said police force for any offense against the laws of the United States or the laws and ordinances or regulations of the District of Columbia, whether before or after conviction thereof in any court or courts, and for misconduct in office, or for any breaches or violation of the rules and regulations made by the Council for the government, conduct, discipline, and good name of said police force; provided, that no person shall be removed from said police force except upon written charges preferred against him in the name of the Chief of Police of said police force to the trial board or boards hereinafter provided for and after an opportunity shall have been afforded him of being heard in his defense; but no person so removed shall be reappointed to any office in said police force; provided further, that special policemen and additional privates may be removed from office by the Mayor without cause and without trial; provided further, that charges preferred against any member of said police force to the trial board or boards hereinafter provided for may be altered or amended, in the discretion of such trial board or boards, at any time before final action by such board or boards, under such regulations as the Council may adopt, provided the accused have an opportunity to be heard thereon. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 221, ch. 3056; 1973 Ed., § 4-121.)

Cross references. — As to removal of probationers without hearing, see § 4-106. As to trial boards, see §§ 4-118 and 4-801 to 4-804. As to joining organization which strikes to enforce demands, see § 4-121. As to accepting fees or presents in addition to salary as cause for removal, see § 4-125. As to failure to comply with rules concerning uniforms as cause for removal, see § 4-126. As to compromising of felony or other unlawful act as cause for removal, see § 4-175. As to rules and regulations, see §§ 4-177 and 4-178. As to inefficiency as cause for removal, see § 4-401.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(93) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Police abolished. — See note to § 4-104.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1982: The "Police Officers Outside Employment Act of 1982" (D.C. Law 4-132, July 24, 1982, 29 DCR 2450).

Council makes the rules which mark the limits of the classes of injuries for which the payment of sick leave in excess of 30 days in any calendar year will be allowed. *Stanberger v. Mason*, 124 F.2d 401 (D.C. Cir. 1942).

Standards of appearance for uniformed police officers set forth in an order prescribing standards of hair length were amply supported not only because they were uniformly applied to a class of employees for a reasonable business purpose but also because permitting patrolmen to let their hair and whiskers grow would present a danger to the public. *Marshall v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 429 (1977).

Undue court interference. — Compelling the Department to hire and assign plaintiff as

an undercover agent to avoid compliance with grooming regulations constitutes undue interference by the court in the internal administration of the Department. *Marshall v. District of Columbia*, 392 F. Supp. 1012 (D.D.C. 1975), *aff'd*, 559 F.2d 726 (D.C. Cir. 1977).

Procedure in employment discrimination cases. — Since officers of the Metropolitan Police Department do not occupy positions in the competitive service, their avenue to the courts for claims of employment discrimination is 42 U.S.C. § 2000e-5, which calls for a charge filed first with the Equal Employment Opportunity Commission. *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978).

Form of written charges required. — While a member of the force may not be removed without written charges against him, Congress did not intend to require such charges to be formed with the technical accuracy of an indictment for a crime. *Rudolph v. Creamer*, 39 App. D.C. 1 (1912).

Specification of misconduct sufficient. — Where charges are filed against members of the force on the grounds of conduct prejudicial to the reputation, good order, and discipline of the force, the specification that policemen were

given money not to report a violation of gambling, was sufficient. *Brodie v. Young*, 133 F.2d 406 (D.C. Cir. 1943).

Privileged communications reporting misconduct. — One who writes communications to police officials concerning the alleged misconduct of a police officer is entitled to a qualified privilege against liability for libel and slander with respect to such communications. *Sowder v. Nolan*, App. D.C., 125 A.2d 52 (1956).

Exhaustion of administrative remedies required for judicial review. — As a general rule, in order to seek judicial review of an administrative personnel decision, a party first must exhaust administrative remedies. *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981).

Cited in *Maghan v. Board of Comm'rs*, 141 F.2d 274 (D.C. Cir. 1944); *Guyton v. District of Columbia*, App. D.C., 245 A.2d 638 (1968); *Matala v. Washington*, App. D.C., 276 A.2d 126 (1971); *Warren v. District of Columbia*, App. D.C., 444 A.2d 1 (1981); *Hairston v. District of Columbia*, 638 F. Supp. 198 (D.D.C. 1986); *District of Columbia Metro. Police Dep't v. Broadus*, App. D.C., 560 A.2d 501 (1989).

§ 4-118. Trial boards.

The Mayor of the District of Columbia is also hereby authorized and empowered to create one or more trial board or boards, to be composed of such number of persons as said Mayor may appoint thereto, for the trial of officers and members of said police force; and the Council of the District of Columbia is hereby authorized and empowered to make and amend rules of procedure before such trial board or boards as it deems proper and the Mayor is hereby authorized and empowered to change or abolish any such trial board or boards as he may deem proper; and the findings of such trial board or boards shall be final and conclusive unless appeal in writing therefrom is made within 5 days to the Mayor of the District of Columbia, the hearings on appeal to be submitted either orally or in writing, and the decision of the said Mayor thereon shall be final and conclusive; provided, that said Mayor shall not be required, in his review of the sentences and findings of such trial board or boards, to take evidence, either oral, written, or documentary, and he shall have power to reduce or modify the findings and penalty of the trial board or boards or remand any case against any officer or member of said police force to such board or boards for such further proceedings as he may deem necessary; provided, that the chairman for the time being of any and every trial board be, and he is hereby, authorized to administer oaths to and take affirmations of witnesses before such board or boards; and provided, that the rules and regulations of said Metropolitan Police force promulgated and in force on July 8, 1906, are hereby ratified and shall remain in force until changed, altered, amended, or abolished by said Council. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056; 1973 Ed., § 4-122.)

Cross references. — As to trial boards, see § 4-801 et seq.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(94) and (95) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Boards established. — Reorganization Order No. 48 of the Board of Commissioners, dated June 26, 1953, established in the government of the District of Columbia a Regular Police Trial Board, a Special Police Trial Board, and a Complaint Review Board to operate in accordance with applicable laws, rules, and regulations. The Order set forth the purpose, manner of selection of members, and the functions of the Boards, and abolished the previ-

ously existing Police Trial and Review Boards. This Order was issued pursuant to Reorganization Plan No. 5 of 1952.

Jurisdiction established. — Where charges were filed against members of the police force on grounds of conduct prejudicial to reputation, good order, and discipline of the police force, the police tribunals had full jurisdiction. *Brodie v. Young*, 133 F.2d 406 (D.C. Cir. 1943).

Lack of judicial jurisdiction to review decision. — Under the Administrative Procedure Act, the Court of Appeals does not have jurisdiction to review approval of a board's decision in a disciplinary proceeding wherein a police officer, who was charged with conduct unbecoming an officer, was determined to be guilty and was fined. *Matala v. Washington*, App. D.C., 276 A.2d 126 (1971).

Police Trial Board decision only requires agreement by majority of Board members. — Trial court erred in vacating a decision of the Metropolitan Police Department Trial Board on the ground that only two of three Trial Board members participated in preparing the findings of fact and conclusions of law supporting the decision. *District of Columbia v. Konek*, App. D.C., 477 A.2d 730 (1984).

Where officer appealed to Mayor, trial board's decision became simply a recommendation, not a final decision. *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978).

Cited in *In re Bullock*, 103 F. Supp. 639 (D.D.C. 1952); *Sonder v. Nolan*, App. D.C., 125 A.2d 52 (1956); *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *Hairston v. District of Columbia*, 638 F. Supp. 198 (D.D.C. 1986).

§ 4-119. Affirmations and oaths to depositions.

The Mayor and the Chief of Police have power to administer, take, receive, and subscribe all affirmations and oaths to any depositions necessary by the rules and regulations of the Mayor, relating to the Metropolitan Police. (R.S., D.C., § 392; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 8, 1906, 34 Stat. 221, ch. 3056; 1973 Ed., § 4-123.)

Cross references. — As to oath by members of trial boards, see § 4-804.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-120. Police surgeons.

Repealed. July 23, 1992, D.C. Law 9-134, § 302(a), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 302(a), 39 DCR 4895.

Cross references. — As to appointment of police surgeons, see § 4-107. As to rules and regulations, see §§ 4-177 and 4-178. As to requirement to attend members of United States Police, see § 4-204. As to requiring police surgeon to attend to firemen, see § 4-304. As to retirement and disability, see § 4-607 et seq.

Temporary repeal of section. — Section 302(a) of D.C. Law 9-134 repealed this section effective July 23, 1992.

Section 501(c)(4) of D.C. Law 9-134 provided that § 302 shall apply as of October 1, 1992.

Section 601(b) of D.C. Law 9-134 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary repeal of section, see § 302(a) of the Omnibus Budget Support Emergency Act of 1992 (D.C. Act 9-203, April 29, 1992, 39 DCR 3219).

Legislative history of Law 9-134. — Law 9-134, the "Omnibus Support Temporary Act of 1992," was introduced in Council and assigned

Bill No. 9-485. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Approved without the signature of the Mayor on May 29, 1992, it was assigned Act No. 9-219 and transmitted to both Houses of Congress for its review. D.C. Law 9-134 became effective on July 23, 1992.

Legislative history of Law 9-145. — Law 9-145, the "Omnibus Budget Support Act of 1992," was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to both Houses of Congress for its review. D.C. Law 9-145 became effective on September 10, 1992.

Application of § 302 of Law 9-145. — Section 501(c)(4) of D.C. Law 9-145 provided that § 302 shall apply as of October 1, 1992.

§ 4-121. Prohibitions; affiliation with organization advocating strikes; conspiracy to interfere with operation of police force by strike; notice of intention to resign.

(a) No member of the Metropolitan Police of the District of Columbia shall be or become a member of any organization, or of an organization affiliated with another organization, which itself, or any subordinate, component, or affiliated organization of which, holds, claims, or uses the strike to enforce its demands. Upon sufficient proof to the Mayor of the District of Columbia that any member of the Metropolitan Police of the District of Columbia has violated the provisions of this section, it shall be the duty of the Mayor of the District of Columbia to immediately discharge such member from the service.

(b) Any member of the Metropolitan Police who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the police force in the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$300 or by imprisonment of not more than 6 months, or by both.

(c) No officer or member of the said police force, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by

permission of the Mayor of the District of Columbia, unless he shall have given the Chief of Police 1 month's notice in writing of such intention. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 223, ch. 3056; Dec. 5, 1919, 41 Stat. 364, ch. 1; 1973 Ed., § 4-125.)

Cross references. — As to proceedings to remove officer, see §§ 4-117 and 4-118.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

This section significantly infringed upon rights guaranteed a public employee by the First Amendment which were not counterbalanced by a compelling state interest. *Police Officers' Guild v. Washington*, 369 F. Supp. 543 (D.D.C. 1973).

Conduct not within prohibition of section. — A police officer's open advocacy of the euphemistic "blue flu" was not enough to bring his conduct within the purview of the prohibition in this section. *Tygett v. Barry*, 627 F.2d 1279 (D.C. Cir. 1980).

§ 4-122. Duty to respect and obey Chief of Police.

It shall be the duty of the police force to respect and obey the Chief of Police as the head and chief of the police force, subject to the rules, regulations, and general orders of the Council of the District of Columbia and the Mayor of the District of Columbia. (R.S., D.C., § 344; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-126.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-123. Chief of Police to make quarterly reports.

The Chief of Police shall make to the Mayor quarterly reports in writing of the state of the Police District, with such statistics and suggestions as he may deem advisable for the improvement of the police government and discipline of said District. (R.S., D.C., § 346; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-127.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-124. Exemption from military or jury duty, civil arrest or process.

No person holding office under this chapter shall be liable to military or jury duty, nor to arrest on civil process, nor to service of subpoenas from civil courts while actually on duty. (R.S., D.C., § 353; 1973 Ed., § 4-128.)

Cross references. — As to exemptions from military service, see § 39-102.

Section references. — This section is referred to in § 1-633.3.

§ 4-125. Rewards, presents, fees or emoluments prohibited; exception; notice to Mayor required; failure to give notice.

(a) Neither the Mayor of the District of Columbia, nor any member of the Council of the District of Columbia or of the police force, shall receive or share in, for his own benefit, under any pretense whatever, any present, fee, or emolument, for police services, other than the regular salary and pay provided by law, except by consent of the Mayor.

(b) The Mayor, for meritorious and extraordinary services rendered by any member of the police force, in the due discharge of his duty, may permit such member to retain for his own benefit any reward or present tendered him therefor.

(c) Upon notice to the Mayor from any member of the police force, of the receipt by such member of any reward or present, the Mayor may order the member to retain the same, or shall dispose thereof for the benefit of the Policemen and Firemen's Relief Fund.

(d) It shall be cause of removal from the police force for any member to receive rewards or presents without giving notice of the same to the Mayor.

(R.S., D.C., §§ 357, 358, 359, 360; June 11, 1878, 20 Stat. 107, ch. 180, § 6; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; 1973 Ed., § 4-129.)

Cross references. — As to proceedings to remove officers, see §§ 4-117 and 4-118. As to compromising felony or other unlawful act, see § 4-175. As to increase in salary for demonstrated efficiency, see § 4-401. As to deposit in Treasury to credit of District of moneys deposited to credit of Policemen and Firemen's Relief Fund, see § 4-601. As to awards for meritorious service, see §§ 4-701 to 4-704. As to apprehension of fugitives and payment of rewards, see § 24-426.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-126. Clothing — Rules of uniformity; failure to comply with rules.

The Council of the District of Columbia shall provide specific rules for uniform clothing of the police force, and any member shall be removed from the force for not complying with such rules. (R.S., D.C., § 365; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-130.)

Cross references. — As to proceedings for removal of officers, see §§ 4-117 and 4-118. As to rules and regulations, see §§ 4-177 and 4-178.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(96) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Standards of appearance for uniformed police officers set forth in an order prescribing standards of hair length were amply supported not only because they were uniformly applied to a class of employees for a reasonable business purpose but also because permitting patrolmen to let their hair and whiskers grow would present a danger to the public. *Marshall v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 429 (1977).

Undue court interference. — Compelling the Department to hire and assign plaintiff as an undercover agent to avoid compliance with grooming regulations constitutes undue interference by the court in the internal administration of the Department. *Marshall v. District of Columbia*, 392 F. Supp. 1012 (D.D.C. 1975), *aff'd in part and rev'd in part*, 559 F.2d 726 (D.C. Cir. 1977).

§ 4-127. Same — Display of United States flag or colors.

(a) The uniform of officers and members of the United States Park Police force, the United States Secret Service Uniformed Division, the Capitol Police, and the Metropolitan Police force of the District of Columbia shall bear a distinctive patch, pin, or other emblem depicting the flag of the United States or the colors thereof.

(b) The Secretary of the Interior in the case in the United States Park Police force, the Secretary of the Treasury in the case of the United States Secret Service Uniformed Division, the Capitol Police Board in the case of the Capitol Police, and the Mayor of the District of Columbia in the case of the Metropolitan Police force shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(c) This section shall take effect 180 days after June 30, 1970. (June 30, 1970, 84 Stat. 357, Pub. L. 91-297, title II, § 201; 1973 Ed., § 4-130a; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of gov-

ernment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Stein v. United States*, App. D.C., 532 A.2d 641 (1987).

§ 4-128. Same — Appropriations.

(a) For furnishing uniforms and all other official equipment prescribed by Department regulations as necessary and requisite in the performance of duty there is hereby authorized to be appropriated a sum not exceeding \$75 per annum for each member of the Metropolitan Police, to be expended subject to rules and regulations to be prescribed by the Mayor of the District of Columbia.

(b) The Chief of Police of the Metropolitan Police force, the Fire Chief of the District of Columbia Fire Department, the Commanding Officer of the United States Secret Service Uniformed Division, and the Commanding Officer of the United States Park Police force are each authorized to provide a clothing allowance, not to exceed \$300 in any 1 year, to an officer or member assigned to perform duties in "plainclothes." Such clothing allowance is not to be treated as part of the officer's or member's basic compensation and shall not be used for the purpose of computing his overtime, promotions, or retirement benefits. Such allowance for any officer or member may be discontinued at any time upon written notification by the authorizing official. (May 25, 1926, 44 Stat. 635, ch. 381; Aug. 29, 1972, 86 Stat. 639, Pub. L. 92-410, title I, § 112; 1973 Ed., § 4-131; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; June 4, 1982, D.C. Law 4-115, § 3, 29 DCR 1701.)

Cross references. — As to rules and regulations, see §§ 4-177 and 4-178.

Section references. — This section is referred to in § 1-633.3.

Legislative history of Law 4-115. — Law 4-115, the "District of Columbia Protective Services Police Identification Act of 1982," was introduced in Council and assigned Bill No. 4-379, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-178 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-129. Residence requirements for members of the Police and Fire Departments; waiver thereof; maintenance of telephone at residence.

(a) Except as otherwise provided in subsection (b) of this section, there shall be no limitation or restriction of place of residence of any officer or member of the Metropolitan Police force, or of the Fire Department of the District of Columbia other than residence within the Washington, District of Columbia, Metropolitan District. For the purposes of this section and § 4-310, "Washington, District of Columbia, Metropolitan District" shall be held to include the District of Columbia and the territory adjacent thereto within a radius of 25 miles from the United States Capitol Building. Any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia living outside of the District of Columbia shall have and maintain a telephone at all times in his residence.

(b) For the purpose of this section and § 4-310, the Chief of Police of the Metropolitan Police force and the Fire Chief of the Fire Department of the District of Columbia, as the case may be, may in individual cases waive the requirement that an officer or member reside within the Washington, District of Columbia, Metropolitan District. (July 25, 1956, 70 Stat. 646, ch. 726, § 1; Aug. 30, 1964, 78 Stat. 698, Pub. L. 88-517, § 1; June 30, 1970, 84 Stat. 358, Pub. L. 91-297, title II, § 203; 1973 Ed., § 4-132a.)

§ 4-130. Appointment of special police without pay.

The Mayor of the District of Columbia may, upon any emergency of riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration, appoint as many special privates without pay, from among the citizens, as he may deem advisable, and for a specified time. During the term of service of such special privates, they shall possess all the powers and privileges and perform all the duties of the privates of the standing police force of the District and such special privates shall wear an emblem

to be presented by the Mayor. (R.S., D.C., §§ 378, 379; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-133.)

Cross references. — As to removal of special police without cause or hearing, see § 4-117.

Section references. — This section is referred to in § 4-107.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-131. Records — Required.

The Mayor of the District of Columbia shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(A) Case number, date of arrest, and time of recording arrest in arrest book;

(B) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(C) Offense with which person arrested was charged and place where person was arrested;

(D) Name and address of complainant;

(E) Name of arresting officer; and

(F) Disposition of case;

(4A) The Metropolitan Police force shall maintain a computerized record of a civil protection order or bench warrant issued as a result of an intrafamily offense; and

(5) Such other records as the Council of the District of Columbia considers necessary for the efficient operation of the Metropolitan Police force. (R.S., D.C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(a); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1; 1973 Ed., § 4-134; Apr. 30, 1991, D.C. Law 8-261, § 4, 37 DCR 5001.)

Section references. — This section is referred to in §§ 4-132, 4-135, and § 6-916.

Legislative history of Law 8-261. — Law 8-261, the "District of Columbia Prevention of Domestic Violence Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-192, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-239 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(98) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section 4-137 relates to records required to be kept under this section. Spock v. District of Columbia, App. D.C., 283 A.2d 14 (1971).

Treatment of official police reports. — Official police reports are treated, for purposes of this section, as equivalent to the arrest book information available to the public. Phillips v. Evening Star Newspaper Co., App. D.C., 424 A.2d 78 (1980), cert. denied, 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848 (1981).

"Hot line" log does not carry authoritative weight as official record. — The log of a police "hot line," a telephone communication system established as a means of providing reports about crimes and police activities to the media, does not carry the dignity and authoritative weight as an official record to which the common-law privilege for media publication of public records involving private citizens applies. Phillips v. Evening Star Newspaper Co., App. D.C., 424 A.2d 78 (1980), cert. denied, 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848 (1981).

Contents of resume used by police in ho-

micide case is not within scope of this section. United States v. Ross, 259 F. Supp. 388 (D.D.C. 1966).

General complaint file does not contain complaints of police misconduct. Cooper v. United States, App. D.C., 353 A.2d 696 (1975).

Denial of access to records not reviewable. — The court's ruling, denying defendant access to police records which he claimed were public, was not reviewable. Ross v. Sirica, 380 F.2d 557 (D.C. Cir. 1967).

Error in disclosing police officers' personnel records. — An accused charged with assault on police officers, who was granted his discovery requests for the disclosure to certain documents within the officers' personnel records to be used as evidence of violence by officers and to prove that they were of violent character and likely to have been the first aggressors, was error. United States v. Akers, App. D.C., 374 A.2d 874 (1977).

Motion to expunge a record of arrest is not a criminal case, and civil rules govern, even though the motion has its origin in a criminal charge. Irani v. District of Columbia, App. D.C., 292 A.2d 804 (1972).

Right to expungement. — Persons unlawfully arrested are entitled to full expungement of their arrest record. Tatum v. Morton, 562 F.2d 1279 (D.C. Cir. 1977).

Ripeness of action to compel expungement. — Arrestees' action against police officials to compel expungement of records of arrest during civil disorders is ripe for determination when all prosecutions arising from the disorders have terminated. Sullivan v. Murphy, 478 F.2d 938 (D.C. Cir.), cert. denied, 414 U.S. 880, 94 S. Ct. 162, 38 L. Ed. 2d 125 (1973).

Expunging arrest record justified. — A student, who established without contradiction that he had been arrested in connection with civil disturbance at which he was innocently and unavoidably present, was justified some relief in his action to have the arrest record expunged. Irani v. District of Columbia, App. D.C., 272 A.2d 849 (1971).

Expunging arrest record not justified. — Defendant charged with disorderly conduct presented no unusual facts to justify the trial court in ordering the arrest record expunged. In re Alexander, App. D.C., 259 A.2d 592 (1969).

Cited in Morrow v. District of Columbia, 417 F.2d 728 (D.C. Cir. 1969); District of Columbia v. Sophia, App. D.C., 306 A.2d 652 (1973); Sullivan v. Murphy, 380 F. Supp. 867 (D.D.C. 1974); Boraks v. Wilson, 383 F. Supp. 195 (D.D.C. 1974); Knable v. Wilson, 570 F.2d 957 (D.C. Cir. 1977); District of Columbia v. Hudson, App. D.C., 404 A.2d 175 (1979); Newspapers, Inc. v. Metropolitan Police Dep't, App. D.C., 546 A.2d 990 (1988).

§ 4-132. Same — Criminal offenses.

(a) In addition to the records kept under § 4-131, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States Marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the Council of the District of Columbia determines this section should not apply). The record shall show:

(1) The circumstances under which the individual came into the custody of the police or the United States Marshal;

(2) The charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) If he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) If his guilt or innocence is so determined, the judgment of the court;

(5) If he is convicted, the sentence imposed; and

(6) If, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Magistrate for the District, the Clerk of the District Court, the Clerk of the Superior Court of the District of Columbia, and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Mayor of the District of Columbia considers necessary to enable the Metropolitan Police force to carry out this section. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 302; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 4-134a.)

Section references. — This section is referred to in § 6-916.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States Commissioner and established in place thereof the Office of United States Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States Magistrates assumed the office pursuant to appointment by order of the District Court, dated June 20, 1969.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(99) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of

Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section 4-137 relates to records required under this section. *Spock v. District of Columbia*, App. D.C., 283 A.2d 14 (1971).

Safekeeping of records. — The Metropolitan Police Department must be charged with the safekeeping of records with respect to which a clarification has been made. District of

Columbia v. Sophia, App. D.C., 306 A.2d 652 (1973).

Cited in Brown v. District of Columbia, App.

D.C., 304 A.2d 292 (1973); Newspapers, Inc. v. Metropolitan Police Dep't, App. D.C., 546 A.2d 990 (1988).

§ 4-133. Reports by other police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Mayor of the District of Columbia, of each offense reported to, and each arrest made by, any other police force operating in the District. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 303; 1973 Ed., § 4-134b.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-133.1. Participation of District of Columbia Metropolitan Police Department in the National Crime Information System.

(a) *Dissemination of adult arrest records to law enforcement agents.* — (1) Notwithstanding any other provision of law, the Metropolitan Police Department of the District of Columbia shall disseminate its unexpurgated adult arrest records to members of the court and law enforcement agents, including the Identification Division of the Federal Bureau of Investigation. Such dissemination shall be done without cost and without the authorization of the persons to whom such records relate.

(2) Any records disseminated under this section shall be used in a manner that complies with applicable federal law and regulations.

(b) *Definitions.* — For purposes of this section:

(1) The term "member of the court" shall include judges, prosecutors, defense attorneys (with respect to the records of their client defendants), clerks of the court, and penal and probation officers.

(2) The term "law enforcement agent" shall include police officers and federal agents having the power to arrest.

(3) The term "unexpurgated adult arrest records" shall include arrest fingerprint cards. (Dec. 12, 1989, 103 Stat. 1903, Pub. L. 101-223, § 7.)

§ 4-134. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under § 24-204, or the United States Board of Parole has authorized the release of a prisoner under § 24-206, it shall notify the Chief of Police of that fact as far in advance of the prisoner's release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of 6 months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner's release as possible. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 304; 1973 Ed., § 4-134c.)

§ 4-135. Records open to public inspection.

The records to be kept by paragraphs (1), (2), and (4) of § 4-131 shall be open to public inspection when not in actual use, and this requirement shall be enforceable by mandatory injunction issued by the Superior Court of the District of Columbia on the application of any person. (R.S., D.C., § 389; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(13); Oct. 25, 1972, 86 Stat. 1108, Pub. L. 92-543, § 1; 1973 Ed., § 4-135.)

Treatment of official police reports. — Official police reports are treated, for purposes of this section, as equivalent to the arrest book information available to the public. *Phillips v. Evening Star Newspaper Co.*, App. D.C., 424 A.2d 78 (1980), cert. denied, 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848 (1981).

Media publication privilege inapplicable to police "hot line" log. — The log of a police "hot line," a telephone communication system established as a means of providing reports about crimes and police activities to the media, does not carry the dignity and authoritative weight as an official record to which the common-law privilege for media publication of public records involving private citizens applies. *Phillips v. Evening Star Newspaper Co.*, App. D.C., 424 A.2d 78 (1980), cert. denied, 451 U.S. 989, 101 S. Ct. 2327, 68 L. Ed. 2d 848 (1981).

Contents of resume used by police in homicide case is not within scope of this section. *United States v. Ross*, 259 F. Supp. 388 (D.D.C. 1966).

"General complaint file" does not contain complaints of police misconduct. *Cooper v. United States*, App. D.C., 353 A.2d 696 (1975).

Denial of access to records not reviewable. — The court's ruling, denying defendant access to police records which he claimed were public, was not reviewable. *Ross v. Sirica*, 380 F.2d 557 (D.C. Cir. 1967).

Cited in *Knable v. Wilson*, 570 F.2d 957 (D.C. Cir. 1977); *District of Columbia v. Hudson*, App. D.C., 404 A.2d 175 (1979); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988).

§ 4-136. Police to have power of constables; authorization to execute certain Superior Court orders.

(a) The Mayor of the District of Columbia, and the members of the police force, shall possess in every part of the District all the common-law powers of constables, except for the service of civil process and for the collection of strictly private debts, in which designation fines imposed for the breach of the ordinances in force in the District shall not be included.

(b) In addition to the powers enumerated in subsection (a) of this section, members of the Metropolitan Police Department shall execute orders of the Superior Court of the District of Columbia issued pursuant to § 16-1005. (R.S., D.C., §§ 394, 1035; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-136; Sept. 14, 1982, D.C. Law 4-144, § 8, 29 DCR 3131.)

Legislative history of Law 4-144. — Law 4-144, the "Proceedings Regarding Intrafamily Offenses Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-212 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

At common law a constable could make an arrest without a warrant of one whom he had reason to suspect had committed a felony. *Carroll v. Parry*, 48 App. D.C. 453 (1919).

§ 4-137. Preservation and destruction of records.

All records of the Metropolitan Police force shall be preserved, except that the Mayor of the District of Columbia, upon recommendation of the Chief of Police, may cause records which it considers to be obsolete or of no further value to be destroyed. (R.S., D.C., § 390; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(c); 1973 Ed., § 4-137.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

This section relates to records required to be kept under § 4-131 requiring keeping arrest books, central criminal records required under § 4-132, and records of receipt and disbursement of money under § 23-1110. *Spock v. District of Columbia*, App. D.C., 283 A.2d 14 (1971).

Legislative intent. — The intent of Congress expressed in this section is that only the Mayor is empowered to order Metropolitan Police Department records destroyed. *District of Columbia v. Hudson*, App. D.C., 404 A.2d 175 (1979).

Destruction of records cannot, absent statutory authority, be ordered by the court. *Spock v. District of Columbia*, App. D.C., 283 A.2d 14 (1971).

Safekeeping of records. — The Metropolitan Police Department must be charged with the safekeeping of records with respect to

which a clarification has been made. *District of Columbia v. Sophia*, App. D.C., 306 A.2d 652 (1973).

Federal relief not precluded. — This section does not preclude the federal courts from giving relief to persons in the District of Co-

lumbia deprived of their constitutional rights. *Sullivan v. Murphy*, 478 F.2d 938 (D.C. Cir.), cert. denied, 414 U.S. 880, 94 S. Ct. 162, 38 L. Ed. 2d 125 (1973).

Cited in *Lively v. Cullinane*, 451 F. Supp. 999 (D.D.C. 1976).

§ 4-138. Execution of warrants.

Any warrant for search or arrest, issued by any judge of the District, may be executed in any part of the District by any member of the police force, without any backing or indorsement of the warrant, and according to the terms thereof; and all provisions of law in relation to bail in the District shall apply to this chapter. (R.S., D.C., § 395; 1973 Ed., § 4-138.)

Cross references. — As to service of process issued by Criminal Division of Superior Court, see § 16-703. As to time of execution of search warrant, see § 23-523. As to duties under search warrant, see §§ 23-523 to 23-525. As to arrest by officers pursuing fugitive into District, see § 23-901. As to execution of search warrant under Alcoholic Beverage Control Act, see § 25-129. As to execution of search warrant under Controlled Substances Chapter, see § 33-565.

References in text. — Pursuant to the Dis-

trict of Columbia Court Reorganization Act of 1970, "judge" was substituted for "magistrate" in this section.

Execution of federal search warrant. — Under this section, the Metropolitan Police had authority to execute a federal search warrant based on a violation of the Federal Controlled Substances Act. *United States v. Thomas*, App. D.C., 294 A.2d 164, cert. denied, 409 U.S. 992, 93 S. Ct. 341, 34 L. Ed. 2d 258 (1972).

§ 4-139. Discriminating laws not to be enforced.

The said Mayor of the District of Columbia shall not enforce any law or ordinance discriminating between persons in the administration of justice. (R.S., D.C., § 396; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-139.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-140. Arrests — Limitation on period of questioning; advisement of rights; release uncharged; admissibility of confessions.

(a) Any person arrested in the District of Columbia may be questioned with respect to any matter for a period not to exceed 3 hours immediately following his arrest. Such person shall be advised of and accorded his rights under

applicable law respecting any such interrogation. In the case of any such arrested person who is released without being charged with a crime, his detention shall not be recorded as an arrest in any official record.

(b) Any statement, admission, or confession made by an arrested person within 3 hours immediately following his arrest shall not be excluded from evidence in the courts of the District of Columbia solely because of delay in presentment. (Dec. 27, 1967, 81 Stat. 735, Pub. L. 90-226, title III, § 301; 1973 Ed., § 4-140a.)

Cross references. — As to wiretap evidence, see § 23-541.

Construction. — This section must be construed in harmony with 18 U.S.C. § 3501, which concerns the issue of voluntariness of a confession. *Byrd v. United States*, App. D.C., 618 A.2d 596 (1992).

Admissibility of confession. — This section must be read in harmony with subsequently enacted 18 U.S.C. § 3501, which provides that, in any criminal prosecution brought by the United States or by the District of Columbia, a confession is admissible in evidence if it is voluntarily given. *Bond v. United States*, App. D.C., 614 A.2d 892 (1992).

Stop and frisk which does not result in an arrest or prosecution has no connection with this section. *Long v. District of Columbia*, 469 F.2d 927 (D.C. Cir. 1972).

Waiver of rights. — A confession obtained during a period of unnecessary delay is inadmissible in evidence, but a valid waiver of an individual's Miranda rights is also a waiver of his Mallory right to presentment without unnecessary delay. *Bond v. United States*, App. D.C., 614 A.2d 892 (1992).

Cited in *Warren v. District of Columbia*, App. D.C., 444 A.2d 1 (1981).

§ 4-141. Same — Duty to make known; return notice.

Every case of arrest shall be made known within 6 hours thereafter to the lieutenant of police on duty in the precinct in which the arrest is made, by the person making the same; and it shall be the duty of the lieutenant within 12 hours after such notice, to make written return thereof, according to the rules and regulations of the Council of the District of Columbia, together with the name of the party arrested, the offense, the place of arrest, and the place of detention. (R.S., D.C., § 399; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-142.)

Cross references. — As to rules and regulations, see §§ 4-177 and 4-178.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 402(100) of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the

Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-142. Same — Neglect to make for offense committed in presence.

If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the District Jail or Penitentiary not exceeding 2 years, or by a fine not exceeding \$500. A member of the police force who deals with an individual in accordance with § 24-524(b) shall not be considered as having violated this section. (R.S., D.C., § 400; Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 2(b); 1973 Ed., § 4-143.)

Citizen's freedom from duty to arrest distinguishable from that of police. — The citizen's freedom from a duty to arrest must be

distinguished from that of a police officer in the District of Columbia. *United States v. Lima*, App. D.C., 424 A.2d 113 (1980).

§ 4-143. Legal assistance for police in wrongful arrest cases.

(a) In accordance with regulations prescribed by the Council of the District of Columbia, the Corporation Counsel of the District of Columbia shall represent any officer or member of the Metropolitan Police Department, if he so requests, in any civil action for damages resulting from an alleged wrongful arrest by such officer or member.

(b) If the Corporation Counsel fails or is unable to represent such officer or member when requested to do so, the Mayor of the District of Columbia shall compensate such officer or member for reasonable attorney's fees (as determined by the court) incurred by him in his defense of the action against him. (July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title V, § 501; 1973 Ed., § 4-143a.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Reimbursement for legal fees. — This section obligates the District of Columbia to recompense a police officer for legal fees, but not money damages, resulting from an alleged wrongful arrest. *Gaines v. Walker*, 986 F.2d 1438 (D.C. Cir. 1993).

Chief could not be held liable under this section when his involvement in an arrest was limited to participation in the arrest decision and not in meeting with United States attorneys to file informations against the arrestees. *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), cert. denied, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161, rehearing denied, 439 U.S. 886, 99 S. Ct. 234, 58 L. Ed. 2d 201 (1978).

Police inspectors are individually liable for unlawful and unreasonable arrests of those who were conducting a peaceful vigil. *Tatum v. Morton*, 402 F. Supp. 719 (D.D.C.), supplemental opinion, 386 F. Supp. 1308 (D.D.C. 1974), remanded, 562 F.2d 1279 (1977).

Excessive use of force in off-duty encounter. — Career police officer had no property interest in representation or attorney's fees under this section to defend a civil action based on excessive use of force in an off-duty encounter. *Hairston v. District of Columbia*, 638 F. Supp. 198 (D.D.C. 1986).

§ 4-144. Detention of witnesses.

The Mayor of the District of Columbia shall provide suitable accommodations within the District for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of all judges in committing witnesses to have regard to the rules and regulations of the Council of the District of Columbia in reference to their detention. (R.S., D.C., § 401; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-144.)

Cross references. — As to rules and regulations, see §§ 4-177 and 4-178. As to detention and release of material witnesses, see §§ 23-1321 and 23-1326.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(101) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of

Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-145. Gaming and bawdy houses and sale of lottery tickets — Arrest of persons; seizure of implements.

If any member of the police force, or if any 2 or more householders shall report in writing, under his or their signature, to the Chief of Police that there are good grounds, stating the same, for believing any house, room, or premises within the police district to be kept or used for any of the following purposes, namely: (1) As a common gaming house, common gaming room, or common gaming premises, for therein playing for wagers of money at any game of chance; (2) as a bawdy house, or as a house of prostitution, or for purposes of prostitution; (3) for lewd and obscene public amusement or entertainment; or (4) for the deposit or sale of lottery tickets or lottery policies, it shall be lawful for the Chief of Police to authorize any member or members of the police force to enter the same, who shall forthwith arrest all persons there found offending against law, and seize all implements of gaming, or lottery tickets, or lottery policies, and convey any person so arrested before the proper court, and bring the articles so seized to the office of the Mayor of the District of Columbia. (R.S., D.C., § 402; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-145.)

Cross references. — As to prostitution, pandering, and houses of prostitution, see § 22-2701 et seq. As to search warrants, see § 23-521 et seq.

Section references. — This section is referred to in § 4-146.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

Warrantless search not justified. — The inconvenience of the officers and the delay in preparing papers and getting before a magistrate was not a justification for a search without a warrant where the officers heard adding machines which they knew were used in a numbers operation and had adequate grounds for seeking a search warrant. *McDonald v. United States*, 335 U.S. 451, 69 S. Ct. 191, 93 L. Ed. 153 (1948).

§ 4-146. Same — Prosecution of persons; destruction of seized articles; closing of premises.

It shall be the duty of the Chief of Police to cause all persons arrested in pursuance of the provisions of § 4-145 to be rigorously prosecuted, the articles seized to be destroyed, and such room or house to be closed, and not again used for such unlawful purpose. (R.S., D.C., § 403; 1973 Ed., § 4-146.)

Cross references. — As to disposition of property, see § 23-525.

Office of Major and Superintendent of

Metropolitan Police abolished. — See note to § 4-104.

§ 4-147. Supervisory power over certain classes of business — Generally.

The Mayor of the District of Columbia shall possess powers of general police supervision and inspection over all: (1) Licensed pawnbrokers; (2) licensed venders; (3) licensed hackmen and cartmen; (4) dealers in secondhand merchandise; (5) intelligence office keepers; (6) auctioneers of watches and jewelry; (7) suspected private banking houses; and (8) other doubtful establishments within the Metropolitan Police District; and in the exercise and furtherance of said supervision may, from time to time, empower members of the police force to fulfill such special duties in the premises, as may be ordained by the Mayor. (R.S., D.C., § 404; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-147.)

Cross references. — As to police power of Council and Mayor over businesses specified in this section, see §§ 1-315 and 1-319. As to license required for pawnbrokers, see § 2-1902 et seq. As to licenses required for auctioneers, see § 47-2808. As to licenses required for secondhand dealers, see § 47-2837. As to Coun-

cil's authority to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2842 and 47-2844.

Section references. — This section is referred to in §§ 2-1901 and 4-150.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-148. Same — Examination of books and premises.

The Mayor of the District of Columbia may direct the Chief of Police to empower any member of the police force, whenever such member shall be in search of property feloniously obtained, or in search of suspected offenders, to examine the books of any pawnbroker or his business premises, or the business premises of any licensed vender or dealer in secondhand merchandise, or intelligence office keeper, or auctioneer of watches and jewelry, or suspected private banking house, or other doubtful establishment. (R.S., D.C., § 405; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-148.)

Cross references. — As to pawnbrokers and examination of books or premises, see §§ 2-1907 and 2-1911.

Section references. — This section is referred to in § 2-1901.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-149. Same — Examination of property pledged to pawnbroker.

Any member of the police force, when thereto authorized in writing by the Chief of Police, and having in his possession a pawnbroker's receipt or ticket, shall be allowed to examine the property purporting to be pawned or pledged, or deposited upon said receipt or ticket, in whosoever possession said property may be; but no such property shall be taken from the possessor thereof without due process or authority of law. (R.S., D.C., § 406; 1973 Ed., § 4-149.)

Cross references. — As to search and seizure of pawned or pledged property, see § 2-1911.

Section references. — This section is referred to in § 2-1901.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-150. Same — Interference with police.

Any willful interference with the Chief of Police, or with any member of the police force, by any of the persons named in § 4-147, while in official and due discharge of duty, shall be punishable as a misdemeanor. (R.S., D.C., § 407; 1973 Ed., § 4-150.)

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

§ 4-151. False or fictitious reports to Metropolitan Police.

Whoever shall make or cause to be made to the Metropolitan Police force of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such report to be false or fictitious; or who shall communicate or cause to be communicated to such Metropolitan Police force, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such information to be false, shall be punished by a fine of not exceeding \$300 or by imprisonment not exceeding 30 days. (Dec. 27, 1967, 81 Stat. 739, Pub. L. 90-226, title VI, § 608; 1973 Ed., § 4-150a.)

Anonymous tips. — While it is possible for anyone with a grudge to fabricate a tip whose neutral details, such as clothing or location, would provide the corroboration required, anyone fabricating information runs a risk, and defendant offered no evidence to suggest that the District of Columbia police have reason to

discredit anonymous tips. *United States v. Clipper*, 973 F.2d 944 (D.C. Cir. 1992), cert. denied, — U.S. —, 113 S. Ct. 1025, 122 L. Ed. 2d 171 (1993).

Cited in *United States v. Bridges*, 717 F.2d 1444 (D.C. Cir. 1983), cert. denied, 465 U.S. 1036, 104 S. Ct. 1310, 79 L. Ed. 2d 708 (1984).

§ 4-152. Property Clerk — Office created; definitions.

(a) There shall be an office of the Metropolitan Police District known as the Office of the Property Clerk. The Property Clerk shall be a member of the Metropolitan Police force. The staff shall consist of civilians who are not members of the Metropolitan Police force, except that police officers may provide security for lost, stolen, or abandoned property held by the office.

(b) For purposes of §§ 4-153 through 4-161 and §§ 4-163 through 4-169:

(1) The term "lost property" means any personal property, tangible or intangible, except a motor vehicle, the owner of which is unknown and which has been casually or involuntarily parted with through negligence, carelessness, or inadvertence.

(2) The term "finder of lost property" means any person other than a public officer of the Metropolitan Police Department who has found lost property. (R.S., D.C., § 408; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1; 1973 Ed., § 4-151; Mar. 5, 1981, D.C. Law 3-160, § 201, 27 DCR 5150; Sept. 9, 1989, D.C. Law 8-24, § 6(a), 36 DCR 4575; May 4, 1990, D.C. Law 8-118, § 2, 37 DCR 1736.)

Cross references. — As to bonding of Metropolitan Police, see § 4-184.

Section references. — This section is referred to in §§ 4-170 and 42-212.

Legislative history of Law 3-160. — Law 3-160, the "Uniform Disposition of Unclaimed Property Act of 1980," was introduced in Council and assigned Bill No. 3-267, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 14, 1980 and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-287 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-24. — Law 8-24, the "District of Columbia Abandoned and Junk Vehicle Removal Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-10, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 16, 1989 and May 30, 1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-118. — Law 8-118, the "Abandoned Property Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-419, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Approved without the signature of the Mayor on March 6, 1990, it was assigned Act No. 8-172 and transmitted to both Houses of Congress for its review.

Delegation of Authority Under D.C. Law

8-24, the "D.C. Abandoned and Junk Vehicle Removal Amend. Act of 1989". — See Mayor's Order 90-11, January 23, 1990.

Seized property held on behalf of court. — When property has been seized incident to a lawful arrest, it is held on behalf of the court. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

In its role as an arm of the United States in any criminal prosecution arising out of a violation of the District of Columbia Code, the Police Department, albeit an agency of the District of Columbia government, holds seized property as agent for, and subject to the direction of, the trial court under whose authority it was seized. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

Property Clerk statute is not exclusive. The trial court has concurrent jurisdiction to rule on a post-conviction motion for the return of property seized in connection with an underlying criminal proceeding. *Williams v. United States*, App. D.C., 427 A.2d 901 (1980), cert. denied, 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241 (1981).

Trial court has subject matter jurisdiction over post-conviction motion to return property; its jurisdiction is concurrent with that of the Property Clerk. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

Superior Court has jurisdiction to hear post-conviction motions for return of property when that property is no longer pertinent to a criminal prosecution. *Alleyne v. United States*, App. D.C., 455 A.2d 887 (1983).

Cited in *Stevens v. United States*, App. D.C., 462 A.2d 1137 (1983).

§ 4-153. Same — Lost, stolen or abandoned property — Custody.

All property, or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force, or the Superior Court of the District of Columbia, or which shall come into such custody, shall be, by such member, or by order of the Court, given into the custody of the Property Clerk and kept by him, except that the custody of any abandoned vehicle shall be transferred to the Abandoned and Junk Vehicle Division of the Depart-

ment of Public Works. (R.S., D.C., § 409; 1973 Ed., § 4-152; Sept. 9, 1989, D.C. Law 8-24, § 6(b), 36 DCR 4575.)

Cross references. — As to depositing of property found in custody of deceased, see § 11-2305. As to custody and disposition of property seized under search warrant, see § 23-525. As to intoxicating liquors seized under Alcoholic Beverage Control Act, see § 25-129.

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

Legislative history of Law 8-24. — See note to § 4-152.

References in text. — The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by the Act of April 1, 1942, 56 Stat. 190, ch. 207, § 1. The Act of July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia." The Act of July 29, 1970, Pub. L. 91-358, § 155(a), substituted "Superior Court of the District of Columbia" for "District of Columbia Court of General Sessions."

Delegation of Authority Under D.C. Law 8-24, the "D.C. Abandoned and Junk Vehicle Removal Amend. Act of 1989". — See Mayor's Order 90-11, January 23, 1990.

Billfold found by officer was presumably lost or abandoned property. *Roseborough v. United States*, App. D.C., 86 A.2d 920 (1952).

Court ordered custody. — Where the court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, the court could direct that it be returned to the custody of the Property Clerk without prejudice to defendant's right to gain possession. *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957).

Cited in *In re D.L.T.*, App. D.C., 383 A.2d 1081 (1978); *United States v. Pannell*, App. D.C., 387 A.2d 736 (1978); *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979); *Franklin Inv. Co. v. District of Columbia*, App. D.C., 462 A.2d 447 (1983); *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989).

§ 4-154. Same — Same — Registration record.

All such property and money shall be particularly registered by the Property Clerk in a book kept for that purpose, which shall contain also a record of the names of the persons from whom such property or money was taken, the names of all claimants thereto, the place where found, the time of the seizure, the date of the receipt, the general circumstances connected therewith, and any final disposal of such property and money. (R.S., D.C., § 410; 1973 Ed., § 4-153.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

Cited in *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957).

§ 4-155. Same — Powers of notaries public.

The Property Clerk is vested with all the powers conferred by law upon notaries public in the District. (R.S., D.C., § 411; 1973 Ed., § 4-154.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

Cited in *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957).

§ 4-156. Same — Administration of oaths; certification of depositions.

The Property Clerk may administer oaths and certify depositions which may be necessary to establish the ownership of any property or money lost, abandoned, or returned to him under the directions of the Mayor of the District of Columbia, including such property or money so returned which is

alleged to have been feloniously obtained or to be the proceeds of crime. (R.S., D.C., § 412; June 11, 1878, 20 Stat. 107, ch. 180, § 6; May 9, 1941, 55 Stat. 185, ch. 99, § 1; 1973 Ed., § 4-155.)

Section references. — This section is referred to in §§ 4-152, 4-157, 4-170 and 42-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957).

§ 4-157. Same — Return of property — General requirements; multiple claimants; immunity; property needed as evidence; notice to owner; disposition upon failure to claim.

(a) Upon satisfactory evidence of the ownership of property or money described in § 4-156 he shall deliver the same to the owner, his next of kin, or legal representative and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the Property Clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, or his next of kin, or legal representative, upon the filing of such power of attorney in the office of said Clerk and the signing of a receipt for such property or money.

(a-1) Seizure or impoundment of property by the Metropolitan Police Department from an individual is prima facie evidence of that person's ownership of the property. The prima facie evidence shall constitute a presumption of ownership by possession and in the absence of other evidence or claims of title, shall be satisfactory evidence of ownership.

(b) In the event 2 or more persons claim ownership of any such property or money, the Property Clerk may give notice by registered mail to all such claimants of whom he shall have knowledge of the time and place of a hearing to determine the person to whom the property or money shall be delivered. At the time and place so designated the Property Clerk shall hear and receive evidence of ownership of the property or money concerned, and shall determine the identity of the owner. After such hearing, the Property Clerk shall deliver the property or money to the person whom the Property Clerk determines is the owner, his next of kin, or legal representative, and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the Property Clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, his next of kin, or legal representative, upon the filing of

such power of attorney in the office of said Clerk and the signing of a receipt for such property or money.

(c) The Property Clerk shall not be liable in damages for any official action performed hereunder in good faith.

(d) Except as provided in §§ 4-165, 4-166, and 4-167 hereof, no property or money in the possession of the Property Clerk alleged to have been feloniously obtained or to be the proceeds of crime shall be delivered under this section if it is required to be held under the provisions of § 4-159 hereof; nor shall it be delivered within 1 year after the date of receipt of said property or money by the Property Clerk unless the United States Attorney in and for the District of Columbia shall certify that such property or money is not needed as evidence in the prosecution of a crime.

(e) Whenever the owner of property in the custody of the Property Clerk has been notified by the Property Clerk, by registered or certified mail, to take possession of such property within 30 days after the date of mailing of such notification, and such owner fails so to do within such period, such property shall be thereafter treated as other unclaimed, abandoned, or lost property and shall be disposed of as provided in § 4-161; provided, that if, in the opinion of the Property Clerk, such property has no salable value, and if within 30 days after the date of mailing such notification such property is not reclaimed by its owner and removed by him from the custody of the Property Clerk, such property shall be disposed of by destruction or otherwise, as the Council of the District of Columbia by regulation or order shall provide. (R.S., D.C., § 413; May 9, 1941, 55 Stat. 185, ch. 99, § 1; June 29, 1953, 67 Stat. 101, ch. 159, § 306(a); Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 1; 1973 Ed., § 4-156; Mar. 16, 1985, D.C. Law 5-194, § 2, 32 DCR 1020.)

Cross references. — As to inspections and seizure of diseased or infested plants or plant products, see § 6-1104. As to limitation of time for bringing actions, see § 12-301. As to gambling premises, see § 22-1505. As to seizure and sale of hunting and fishing equipment, see § 22-1630. As to taking of dangerous articles, see § 22-3217. As to authorization for recovery of civil damages, see § 23-554. As to seizure and forfeiture of contraband alcoholic beverages and vehicles, see § 25-144. As to seizure of milk, cream and ice cream products illegally brought into the District, see § 33-307. As to forfeiture of certain controlled substances, see §§ 33-534, 33-552, and 33-604. As to seizure and forfeiture of contraband motor vehicle fuels, see § 47-2320. As to forfeiture and seizure of cigarettes, see § 47-2409. As to seizure of milk containers, see § 48-205.

Section references. — This section is referred to in §§ 4-152, 4-167, 4-170, and 42-212.

Legislative history of Law 5-194. — Law 5-194, the "Metropolitan Police Department Presumption of Ownership from Possession Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-503, which was referred to the Committee on the Judiciary.

The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-259 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(102) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Intent of this section is to authorize the Property Clerk to return property and to protect him from damage liability when he mistakenly returns property to the wrong person. *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979).

This section was never intended to deprive local courts, or the United States District Court, of any of its substantive or ancillary jurisdiction. *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979).

Property Clerk statute is not exclusive. The trial court has concurrent jurisdiction to rule on a post-conviction motion for the return of property seized in connection with an underlying criminal proceeding. *Williams v. United States*, App. D.C., 427 A.2d 901 (1980), cert. denied, 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241 (1981).

Scope of ownership hearings. — This section gives the Property Clerk authority to conduct hearings for the purpose of determining ownership of the property coming into the hands of the Police Department but does not confer the force of a judgment upon his determination. *Carroll v. Heidenheimer, Inc.*, App. D.C., 44 A.2d 71 (1945).

Burden of proving ownership. — Where locker company found \$2,500 in cash in one of the lockers, and the money was turned over to the Property Clerk, the claimant of the money had the burden of proving ownership by a preponderance of the evidence. *Lewis v. Aderholdt*, App. D.C., 203 A.2d 919 (1964), cert. denied, 382 U.S. 872, 86 S. Ct. 111, 15 L. Ed. 2d 110 (1965).

Judicial review. — Review by the Superior Court of a determination by the Property Clerk under this section is de novo. *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

Trial court has subject matter jurisdiction over post-conviction motion to return property; its jurisdiction is concurrent with that of the Property Clerk. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

And personal jurisdiction when United States represents government of District. — The Superior Court has personal jurisdiction to rule on a post-conviction motion for the return of property when the United States is before it. For the purpose of such a motion, the United States represents the government of the District of Columbia and its police. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

Trial court may order or deny return of property despite existence of separate civil remedies. — The existence of separate civil remedies does not prevent the trial court from ordering (or denying) the return of property in a criminal case, if the latter route is selected by the defendant in a particular case. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

Court ordered custody. — Where the court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, the court would direct that it be returned to the custody of the Property Clerk without prejudice to defendant's right to gain possession. *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957).

Cited in *Welsh v. United States*, 220 F.2d 200 (D.C. Cir. 1955); *Wilson v. Bittinger*, 262 F.2d 714 (D.C. Cir. 1958); *Smith v. Whitehead*, App. D.C., 436 A.2d 339 (1981); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 4-158. Same — Same — Acquittal of accused.

Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and whenever so brought with such claimant and the person arrested before any court for trial, and the court shall be satisfied from evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him, said court may, in writing, order such property or money to be returned, and the Property Clerk, if he have it, to deliver such property or money to the accused person himself, and not to any attorney, agent, or clerk of such accused person. (R.S., D.C., § 414; 1973 Ed., § 4-157.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

Intent of this section is to authorize the Property Clerk to return property and to protect him from damage liability when he mis-

takenly returns property to the wrong person. *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979).

This section was never intended to deprive local courts, or the United States District

Court, of any of its substantive or ancillary jurisdiction. *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979).

This section is not statutory denial of power to trial court in all situations except that in which a defendant has been acquitted and the court is satisfied that he is innocent. *Wilson v. United States*, App. D.C., 424 A.2d 130 (1980).

This section does not limit federal jurisdiction to order the return of property to cases

in which the defendant was acquitted. *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979).

Return of property before trial. — It is inappropriate, in the absence of special circumstances, to return property to an alleged victim of crime before trial has been held and the defendant has had the opportunity to seek its return. *Stevens v. United States*, App. D.C., 462 A.2d 1137 (1983).

Cited in *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 4-159. Same — Ownership claim by other than person arrested.

If any claim to the ownership of such property or money shall be made on oath before the court, by or in behalf of any other persons than the persons arrested, and the accused person shall be held for trial or examination, such property or money shall remain in the custody of the Property Clerk until the discharge or conviction of the persons accused. (R.S., D.C., § 415; 1973 Ed., § 4-158.)

Section references. — This section is referred to in §§ 4-152, 4-157, 4-170, and 42-212.

Return of property before trial. — It is inappropriate, in the absence of special circumstances, to return property to an alleged victim of crime before trial has been held and the defendant has had the opportunity to seek its return. *Stevens v. United States*, App. D.C., 462 A.2d 1137 (1983).

Notice should be given to an accused of any proposed release of evidence. *United States v. Averell*, 296 F. Supp. 1004 (D.D.C. 1969).

Misprision of felony distinguished from accessory after the fact. — The offense of

misprision of felony makes unlawful the aiding or assisting of any person suspected of crime to escape full judicial examination by the withholding of any information about a felony or other unlawful act and must be distinguished from the offense of accessory after the fact, which requires an act of assistance by the alleged accessory. *Butler v. United States*, App. D.C., 481 A.2d 431 (1984), cert. denied, 470 U.S. 1029, 105 S. Ct. 1398, 84 L. Ed. 2d 357 (1985).

Cited in *United States v. Scott*, 149 F. Supp. 837 (D.D.C. 1957); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 4-160. Same — Property transmitted; deceased and incompetent persons; storage; fees; sale.

(a) All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime or from persons alleged to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the Property Clerk to be fully registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police.

(b)(1) Whenever any money or property of a deceased person of a value of less than \$1,000 coming into the custody of the Property Clerk shall remain in

his custody for a period of 6 months or more without being claimed and repossessed by the next of kin or the legal representative of such deceased person, such money or property shall be disposed of as lost or abandoned property as provided in § 4-161; provided, that prior to the disposition of such property of a deceased person it shall be the duty of the Property Clerk to ascertain whether there is pending in the court having probate jurisdiction any petition seeking the appointment of a legal representative of such deceased person, and, if such a petition is pending in such court, the Property Clerk shall not dispose of such property until final disposition by the court of such petition; provided further, that in any case where the Property Clerk acquires actual knowledge that a petition for the appointment of a legal representative of such deceased person has been filed or is pending in a court outside of the District of Columbia, the Property Clerk shall not dispose of such property until final disposition by the court of such petition.

(2) Whenever any money or property of a deceased person shall be of a value of \$1,000 or more and shall have remained in the custody of the Property Clerk for at least 6 months, all records pertaining to the same shall be referred by the Property Clerk to the Corporation Counsel of the District of Columbia for the purpose of instituting appropriate proceedings to effect the appointment of an administrator of the estate of such decedent; provided, that upon expiration of the time for final settlement of such estate under law then in effect, the residue thereof in the absence of any claim by the heirs at law or next of kin of the decedent, as provided by law, shall be deposited into the registry of the court having probate jurisdiction, and upon the expiration of a period of 3 years, no demand having been made upon such funds by lawful heirs or other rightful claimants, the amount so deposited in such registry shall be deposited in the Treasury to the credit of the District of Columbia; provided further, that if the administrator does not take possession of such property within 3 months from the date of his appointment, the Property Clerk may, after giving such administrator 30 days notice by registered or certified mail, sell such property at public auction, and, after deducting the expenses of such sale, and expense incident to the maintenance of custody of such property, shall pay the remaining proceeds of such sale over to such administrator.

(c) Whenever the Property Clerk has custody of any property belonging to any person who has been adjudged of unsound mind and a committee has been appointed for such person but fails to take possession of the property of such person in the custody of the Property Clerk within 6 months from the date of such committee's appointment, the Property Clerk shall give such committee 60 days notice by registered or certified mail of his intention to sell such property at public auction or otherwise dispose of such property in accordance with law. If, upon the expiration of such 60 days notice, the committee has not taken custody of such property: (1) The Property Clerk is authorized to sell such property at public auction, and, after deducting the expenses of the sale, expenses incident to the maintenance and custody of such property, and any amounts due the District of Columbia for care and maintenance of the adjudicated patient, shall pay the remaining proceeds of the sale over to such com-

mittee; or (2) if in the opinion of the Property Clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Council of the District of Columbia shall, by regulation, or the Mayor of the District of Columbia shall, by order, determine.

(d)(1) The said Mayor is authorized, in his discretion, to store in any commercial warehouse or garage in the District of Columbia, or in or on any facility under the jurisdiction of the District of Columbia, any property coming into the custody of the Property Clerk pursuant to this chapter, including vehicles impounded by any officer or member of the Metropolitan Police force.

(2) The Mayor is authorized to fix, by regulation, the fees to be charged to reimburse the District of Columbia for the cost of services rendered by the Metropolitan Police force in taking custody of and protecting such property and for the cost of storing such property in any commercial warehouse or garage, and whenever any such property is stored in or on any facility under the jurisdiction of the District of Columbia, the Mayor shall fix the storage fee in an amount reasonably estimated by him to be the value of the storage service rendered for each day during which such property is so stored, and to collect all such fees due and owing for such property before releasing such property to its owner or his legal representative; provided, that the Mayor is authorized, in his discretion, to waive the charging and collecting of such fees for property taken into custody as evidence, the proceeds of crime, or from persons supposed to be insane; provided further, that the Property Clerk is authorized to sell at public auction pursuant to subsection (b) of § 4-161 any property stored in a commercial garage or warehouse, when the storage charges for such property exceed 75% of its value as determined by the Property Clerk, regardless of the amount of time for which such property is required by other sections of this chapter to be held by the Property Clerk.

(3) Fees collected by reason of this section shall be deposited in the Treasury to the credit of the District of Columbia. (R.S., D.C., § 416; May 29, 1896, 29 Stat. 191, ch. 270; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 1; Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 2; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(a)(1); 1973 Ed., § 4-159.)

Section references. — This section is referred to in §§ 4-152, 4-161, 4-170 and 4-212.

Editor's notes. — In subsection (d), "subsection (b) of § 4-161" has been substituted for "subsection (a) of § 4-161."

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(103) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the

Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Wilson v. Bittinger*, 262 F.2d 714 (D.C. Cir. 1958); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 4-161. Same — Sale at public auction; motor vehicle with lien of record; disposition of proceeds from sale.

(a) With respect to all property (including money), except perishable property, animals, firearms and property of insane persons, not otherwise disposed of in accordance with § 4-160, that shall remain in the custody of the Property Clerk for not less than 90 days without being claimed and repossessed, the Property Clerk shall:

(1) Publish or cause to be published in a newspaper of general circulation in the District, once a week for 2 consecutive weeks:

(A) A description of the property; and

(B) Notice that if such property is not claimed by the rightful owner within 45 days from the date of 1st publication, title to the property shall revert to the finder of lost property after deduction for the expenses of custody and publication, or to the District of Columbia in all other cases; and

(2) Post or cause to be posted in the Metropolitan Police Department headquarters, where public notices are commonly or usually posted, a copy of the notice published in the newspaper of general circulation in the District, and shall make a record of the date when such publication and the posting of the notices are made.

(b) If neither the rightful owner nor the finder appear to claim the lost property, title to such property shall transfer to the District government and the property may be retained by the Mayor for official government use or may be sold at public auction at such place and time as the Property Clerk may direct and in such a manner as to expose to the inspection of bidders all property so offered for sale. The Property Clerk needs not offer any property for sale if, in the Property Clerk's opinion, the probable cost of sale exceeds the value of the property.

(c) The purchaser at any sale conducted by the Property Clerk pursuant to this section shall receive title to the property purchased, free from all claims of the rightful owner or the finder of the property and all persons claiming through and under the rightful owner or the finder. The Property Clerk shall execute all documents necessary to complete the transfer of title.

(d) All proceeds from any sale under this section shall be deposited in the General Fund of the District government.

(e) Whenever the Abandoned and Junk Vehicle Division of the Department of Public Works shall have in its custody any motor vehicle upon which there is a lien or liens of record in the Office of the Recorder of Deeds of the District of Columbia, it shall, prior to the sale thereof pursuant to this section, notify by registered or certified mail each lienor and lienee in any such case of such custody and impending sale, and if such lienor or lienee fail to remove such property from the custody of the Abandoned and Junk Vehicle Division of the Department of Public Works within 45 days from the date of the mailing of such notification, such lien or liens shall be considered to have been abandoned, and shall be thenceforth null and void. Upon being notified in writing of such fact by the Abandoned and Junk Vehicle Division of the Department

of Public Works, the Recorder of Deeds of the District of Columbia is authorized to indicate on his records that such lien or liens are thenceforth null and void and the Abandoned and Junk Vehicle Division of the Department of Public Works is authorized to sell any such motor vehicle at public auction free and clear of such lien and liens; except that the proceeds of such sale shall be available:

- (1) For the payment of all expenses incident to such sale and custody;
- (2) For the payment of such liens so declared null and void;
- (3) For payment to the owner in accordance with subsection (a) of this section; and

(4) The remainder, if any, shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(f)(1) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this section.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (R.S., D.C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2; Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 4; 1973 Ed., § 4-160; Mar. 5, 1981, D.C. Law 3-160, § 202, 27 DCR 5150; Sept. 29, 1988, D.C. Law 7-164, § 2, 35 DCR 5739; Sept. 9, 1989, D.C. Law 8-24, § 6(c)-(e), 36 DCR 4575.)

Section references. — This section is referred to in §§ 4-152, 4-157, 4-160, 4-170, and 42-212.

Legislative history of Law 3-160. — See note to § 4-152.

Legislative history of Law 7-164. — Law 7-164, the "District of Columbia Forfeited Property Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-325, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-24. — See note to § 4-152.

Delegation of Authority Under D.C. Law 8-24, the "D.C. Abandoned and Junk Vehicle Removal Amend. Act of 1989". — See Mayor's Order 90-11, January 23, 1990.

Delegation of Authority Pursuant to D.C. Law 7-164, the "D.C. Forfeited Property Amendment Act of 1988". — See Mayor's Order 90-71, May 10, 1990.

Purposes of this section are to provide a legal method of disposing of unclaimed prop-

erty and to restore such property to lawful claimants. *District of Columbia v. Hamilton Nat'l Bank*, App. D.C., 76 A.2d 60 (1950).

Congressional intent. — By imposing a notice requirement, Congress intended that the advertisement contain a reasonably complete identification of the chattel to be sold, and the reader sufficient information to enable him to recognize the chattel as his own. *District of Columbia v. Hamilton Nat'l Bank*, App. D.C., 76 A.2d 60 (1950).

Exclusivity of section's procedure. — This section contains the only sale procedure applicable to an impounded vehicle. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Substitution of collateral security allowed. — Rather than creating a statutory lien, this section allows substitution of collateral security for the scofflaw's appearance in court. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Only debts to be satisfied from auction of abandoned property under section are expenses of sale and custody. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Payment of traffic tickets. — No provision

is made for payment of traffic tickets out of the sale proceeds. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Cited in *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 4-162. Immunity from damages to property; exception; "gross negligence" defined.

Neither the government of the District of Columbia nor any officer or employee thereof shall be liable for damage to any property resulting from the removal of such property from public space, or the transportation of such property into the custody of the Property Clerk, Metropolitan Police Department, nor for damage to any such property while such property is in the custody of the Property Clerk, Metropolitan Police Department, when such custody is maintained pursuant to the requirements of law, except that the government of the District of Columbia or any such officer or employee may be liable for damage to such property as a result of gross negligence in the removal, transportation, or storage of such property; provided, that should a judgment be entered for the District of Columbia against any commercial warehouseman or garagekeeper for damage to such property in his care, recovery on such judgment, less all administrative expenses and court costs to the District of Columbia involved in such litigation, shall be paid by the District of Columbia to the owner of the damaged property as determined by the Property Clerk. For the purpose of this section, the term "gross negligence" means a willful intent to injure property, or a reckless or wanton disregard of the rights of another in his property. (Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 5; 1973 Ed., § 4-160a.)

Section references. — This section is referred to in § 42-212.

Cited in *First Am. Bank v. District of Columbia*, App. D.C., 583 A.2d 993 (1990).

§ 4-163. Sale of unclaimed animals.

Horses and other animals taken by the police and remaining unclaimed for 20 days may be advertised and sold upon 10 days public notice. (R.S., D.C., § 418; 1973 Ed., § 4-161.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

§ 4-164. Sale of perishable property.

All perishable property so taken and unclaimed shall be sold at once. (R.S., D.C., § 419; 1973 Ed., § 4-162.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

§ 4-165. Property delivered to owner preceding trial — Generally.

When animals or articles of property (except perishable property) other than money, returned to the Property Clerk as the proceeds of crime, are shown by sufficient evidence to be necessary for the current use of the owner and not for sale, the Mayor of the District of Columbia has power, in his discretion, to authorize the Property Clerk to place the same in the custody of the owner, upon sufficient bonds being given by the owner in the sum of twice the value of the property, conditioned for the production of the same at any time within 1 year, when required for use in court as evidence in any proceedings thereon. (R.S., D.C., § 420; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-163.)

Section references. — This section is referred to in §§ 4-152, 4-157, 4-170, and 42-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-166. Same — Perishable property.

Perishable property, returned to the Property Clerk as the proceeds of crime, may be delivered to the owner on ample security being taken by the court for his appearance to prosecute the case. (R.S., D.C., § 421; 1973 Ed., § 4-164.)

Section references. — This section is referred to in §§ 4-152, 4-157, 4-170, and 42-212.

§ 4-167. Same — Large quantities of goods held for sale.

When large quantities of goods held for sale by the owner, come into the possession of the Property Clerk as the proceeds of crime, the same may be delivered to the owner, his heirs or representatives, as provided in § 4-157, upon ample security to prosecute the case. But in such cases goods to the estimated value of \$50 shall be retained by the Property Clerk until the discharge or conviction of the accused. (R.S., D.C., § 422; 1973 Ed., § 4-165.)

Section references. — This section is referred to in §§ 4-152, 4-157, 4-170, and 42-212.

§ 4-168. Use of property as evidence.

If any property or money placed in the custody of the Property Clerk shall be desired as evidence in the Superior Court of the District of Columbia, such property shall be delivered to any officer who shall present an order to that effect from such Court; but such property shall not be retained in the Court, but shall be returned to the Property Clerk, to be disposed of according to the provisions of this chapter. (R.S., D.C., § 423; 1973 Ed., § 4-166.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

References in text. — The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by the Act of April 1, 1942, 56 Stat. 190, ch. 270, § 1. The Act of July 8, 1963, § 1, sub-

stituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia." The Act of July 29, 1970, Pub. L. 91-358, § 155(a), substituted "Superior Court of the District of Columbia" for "District of Columbia Court of General Sessions."

§ 4-169. Property treated as abandoned.

Any property or money returned to the Property Clerk as the proceeds of crime, and which shall not be called for as evidence by any proceeding in the courts of the District within 1 year from the date of such return, may, unless specially claimed by the owner within that time, be thereafter treated as other unclaimed, abandoned, or lost property or money, as provided in this chapter. (R.S., D.C., § 424; 1973 Ed., § 4-167.)

Section references. — This section is referred to in §§ 4-152, 4-170, and 42-212.

§ 4-170. Abandoned intangible personal property.

Nothing in §§ 4-152 through 4-161 and 4-163 through 4-169 shall be held to require the Property Clerk to make disposition of any abandoned intangible personal property except as provided for in Chapter 2 of Title 42. (Mar. 5, 1981, D.C. Law 3-160, § 203, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 4-152.

§ 4-171. Private detectives — Bond required; conditions thereof; suits by injured parties.

The Council of the District of Columbia shall by regulation require that bonds in the amount of not more than \$25,000 shall be furnished and kept in force by all persons licensed as private detectives in the District of Columbia. Bonds required by this section shall be corporate bonds and shall run to the District and shall be conditioned upon the observance by the licensed private detective and any agent, employee, or person acting in behalf of the licensed private detective of all laws and regulations in force in the District of Columbia applicable to the conduct of persons licensed as private detectives. Such bonds shall be for the benefit of any person who may suffer damages as a

result of violation of any law or regulation by or on the part of any licensed private detective or any agent, employee, or person acting on the behalf of any private detective. In addition to any right to any other legal action, any person aggrieved by the violation of any law or regulation by a licensed private detective may bring suit against the surety on a bond required by this section either alone or jointly with the principal thereon and recover damages for such violation of law or regulation in an amount not to exceed the penal amount of the bond. The provisions of paragraphs (2), (3), and (5) of subsection (b) of § 1-337 shall be applicable to each bond authorized by this section as if it were the bond authorized by paragraph (1) of such subsection (b); provided, that nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89-347, § 9(b); 1973 Ed., § 4-171a.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(105) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-172. Same — Duty in making arrest.

It shall be the duty of every person prosecuting the business of a private detective, who may arrest a person for crime, to bring the person arrested, with all evidence of the alleged crime, including property or money which may become evidence, immediately to the office of the Chief of Police, or to the proper court, where the case shall undergo an examination. (R.S., D.C., § 429; 1973 Ed., § 4-172.)

Cross references. — As to private detectives, see § 47-2839.

Office of Major and Superintendent of

Metropolitan Police abolished. — See note to § 4-104.

§ 4-173. Same — Acting without compliance with law.

Any person practicing as a private detective or advertising or holding himself out as such without first complying with the provisions of law relative to private detectives shall be guilty of a misdemeanor and subject to a fine not exceeding \$500 or imprisonment in the District Jail for a period not exceeding 11 months and 29 days. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 5; 1973 Ed., § 4-173.)

Cross references. — As to private detectives, see § 47-2839.

§ 4-174. Same — Applicable police provisions.

All laws which govern the police force in the matters of persons, property, or money shall be applicable to all private detectives (or to persons practicing as detectives, whatever other name they may assume) and such detectives or persons shall make like returns and dispositions of such matters as required by law and the rules of the Mayor governing the police force. (R.S., D.C., § 430; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-174.)

Cross references. — As to private detectives, see § 47-2839.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-175. Compromise of felony; withholding information; receiving compensation from person arrested or liable to arrest; permitting escape.

It is unlawful for any private detective, or any member of the police force, or for any other person to compromise a felony or any other unlawful act, or to participate in, assent to, aid or assist any person suspected of crime to escape a full judicial examination by failing to give known facts or reasonable causes of suspicion, or withholding any information relative to the charge or suspicion from the proper judicial authorities; or in any manner to receive any money, property, favor, or other compensation from, or on account of, any person arrested or subject to arrest for any crime or supposed crime; or to permit any such person to go at large without due effort to secure an investigation of such supposed crime. And for any violation of the provisions of this section, or either of them, such member of the police force, or private detective, or other person guilty thereof, shall be deemed as having compromised a felony, and shall be thereafter prohibited from acting as an officer of said police force, or as a private detective, and shall be prosecuted to the extent of the law for aiding criminals to escape the ends of justice. (R.S., D.C., § 431; 1973 Ed., § 4-175.)

Cross references. — As to the proceedings for removal of police officer, see §§ 4-117 and 4-118. As to policemen's prohibition from accepting fees in addition to salary, see § 4-125.

As to policemen's prohibition from receiving rewards for apprehension of fugitives, see § 24-426.

§ 4-176. Use of unnecessary or wanton force.

Any officer who uses unnecessary and wanton severity in arresting or imprisoning any person shall be deemed guilty of assault and battery, and, upon conviction, punished therefor. (R.S., D.C., § 434; 1973 Ed., § 4-176.)

Public policy. — The public policy behind this section is to promote the safety of citizens by deterring police use of excessive force. That policy would be undermined if the courts were to allow an officer who was sued for use of excessive force to defend his actions by asserting that because the plaintiff was contributorily negligent or because the plaintiff assumed the risk the officer should be excused from liability. *District of Columbia v. Peters*, App. D.C., 527 A.2d 1269 (1987).

Degree of force officer permitted to use to prevent escape is not determined by reference to whether the crime committed is a felony or a misdemeanor; regardless of the nature of the underlying crime, the officer may use only such force as appears reasonably necessary under the circumstances to effect and maintain the arrest. *Lassiter v. District of Columbia*, App. D.C., 447 A.2d 456 (1982).

Court may decline to impose civil liability under this section if sufficient policy considerations militate against it. *District of Columbia v. White*, App. D.C., 442 A.2d 159 (1982).

Intentional contact resulting in injury constitutes battery. — Where complaint described an injury received as a consequence of

excessive force alleged to have been exercised by the arresting officers and there is no dispute that the physical contact was intentional, such intentional contact constitutes battery, despite use in the complaint of the terms "carelessly and negligently," which are conclusory assertions that do not raise a cognizable claim of negligence. *Maddox v. Bano*, App. D.C., 422 A.2d 763 (1980).

Assault on police officer does not excuse use of excessive force. — The fact that a person assaults a police officer does not excuse the police officer from using excessive force, as distinguished from the force reasonably necessary to deal with the situation. *District of Columbia v. Peters*, App. D.C., 527 A.2d 1269 (1987).

Collateral estoppel. — Individual convicted of criminal assault under § 22-505 is not collaterally estopped from asserting liability in civil action for excessive force arising out of same incident. *District of Columbia v. Peters*, App. D.C., 527 A.2d 1269 (1987).

Cited in *Etheredge v. District of Columbia*, 120 WLR 2225 (Super. Ct. 1992); *Joyce v. United States*, 795 F. Supp. 1 (D.D.C. 1992); *Cox v. District of Columbia*, 821 F. Supp. 1 (D.D.C. 1993); *Coleman v. District of Columbia*, 121 WLR 1181 (Super. Ct. 1993).

§ 4-177. Police Code — Publication authorized.

The Mayor of the District of Columbia is authorized, from time to time, without expense to the United States, to cause to be collected into compact form all the laws and ordinances in force in the District having relation and applicable to police and health, and to publish the same in a form easily accessible to all members of the community as the Police Code of the District. (R.S., D.C., § 437; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-177.)

Cross references. — As to rules and regulations, see § 1-319. As to ordinances, rules and regulations governing police authorized, see §§ 4-107, 4-114, 4-117, 4-118, 4-126, 4-128, 4-141, and 4-144. As to proof of ordinances and regulations, see § 14-505.

Section references. — This section is referred to in § 4-178.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

§ 4-178. Same — Legal effect.

The Police Code, prepared in accordance with § 4-177 and such rules as the Mayor of the District of Columbia may from time to time adopt for the purpose of enforcing and carrying out the provisions thereof, shall constitute the law of the District upon the matters therein contained. (R.S., D.C., § 438; 1973 Ed., § 4-178.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-179. Band — Authorization; detail of local officers; employment and compensation of Director.

There is hereby authorized to be established in the Metropolitan Police Department a band to perform at such municipal or civic functions and events as may be authorized by the Mayor of the District of Columbia. The Mayor is authorized in his discretion to detail officers and members of the Metropolitan Police force and the District of Columbia Fire Department to participate in the activities of such band. The said Mayor is authorized to employ, without reference to the civil service laws, 1 Director for such band with compensation at a rate not to exceed the rate of compensation to which a captain in the Metropolitan Police force is entitled. (July 11, 1947, 61 Stat. 311, ch. 226, § 1; Aug. 14, 1957, 71 Stat. 345, Pub. L. 85-129, § 1; Aug. 16, 1971, 85 Stat. 343, Pub. L. 92-124, § 1(1); 1973 Ed., § 4-182.)

Section references. — This section is referred to in §§ 1-633.3, 4-180, 4-181, 4-182, and 4-183.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-180. Same — Detail of federal officers.

The Secretary of the Interior is authorized in his discretion to detail officers and members of the United States Park Police force to participate in the activities of the band established by §§ 4-179 to 4-183, and the Secretary of the Treasury is authorized in his discretion to detail officers and members of the United States Secret Service Uniformed Division to participate in the activities of such band. (July 11, 1947, ch. 226, § 2; Aug. 16, 1971, 85 Stat. 343, Pub. L. 92-124, § 1(2); 1973 Ed., § 4-182a; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-633.3, 4-181, 4-182, and 4-183.

§ 4-181. Same — Retirement of Director — Conditions; annuities.

Notwithstanding the limitations of existing law, the person who is the Director of the Metropolitan Police Force band may elect to retire after having served 10 or more years in such capacity and having attained the age of 70 years. Upon such retirement, whether for age and service or for disability, said Director and his surviving spouse shall be entitled to receive annuities in amounts equivalent to, and under the conditions applicable to, the annuities which a captain in the Metropolitan Police force and his surviving spouse may be entitled to receive after such captain has retired from said force for substantially the same reason as that for which said Director may retire, whether for age and service or for disability, as the case may be. If the said Director shall apply for retirement for disability, he shall not be eligible to retire under § 4-616, but he shall be eligible to apply for retirement under § 4-615, in like manner as if the said Director were an officer or member of the Metropolitan Police force. The annuities hereby authorized shall be in addition to any pension or retirement compensation which said Director may be entitled to receive from any other source, whether from the United States or otherwise. The annuities payable to said Director and his surviving spouse pursuant to §§ 4-179 to 4-183 shall be payable from District of Columbia appropriations, but shall not be considered as annuities payable to an officer or member of the Metropolitan Police force or to the surviving spouse of such officer or member. Appropriations for the operations of the Metropolitan Police Department are made available for this purpose. Annuities authorized by this section shall be computed on the basis of compensated service rendered after July 11, 1947. (July 11, 1947, ch. 226, § 3; Sept. 22, 1959, 73 Stat. 640, Pub. L. 86-356; Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 202(a); 1973 Ed., § 4-183a.)

Section references. — This section is referred to in §§ 1-633.3, 4-180, 4-182, and 4-183.

§ 4-182. Same — Same — Applicable statutory provisions; transfer of moneys from Civil Service Retirement and Disability Fund.

The person who is the Director of the Metropolitan Police Force band shall, upon his retirement from such position, be retired under the provisions of §§ 4-179 to 4-183 and not under subchapter III of Chapter 83 of Title 5, United States Code, and the moneys to his credit in the Civil Service Retirement and Disability Fund created under the authority of such subchapter, on the date of such retirement, together with such moneys in such Fund as may have been contributed by the District of Columbia toward the cost of his annuity under such subchapter, shall be transferred to the credit of the general revenues of the District of Columbia. (July 11, 1947, ch. 226, § 4; Sept. 22, 1959, 73 Stat. 641, Pub. L. 86-356; Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 202(b); 1973 Ed., § 4-183b.)

Section references. — This section is referred to in §§ 1-633.3, 4-180, 4-181, and 4-183.
References in text. — "Subchapter III of

Chapter 83 of Title 5, United States Code" is codified at 5 U.S.C. §§ 8331 to 8351.

§ 4-183. Same — Appropriations.

Appropriations to carry out the purpose of §§ 4-179 to 4-183 is hereby authorized. (July 11, 1947, 61 Stat. 311, ch. 226, § 5; Sept. 22, 1959, 73 Stat. 641, Pub. L. 86-356; Aug. 16, 1971, 85 Stat. 343, Pub. L. 92-124, § 1(3); 1973 Ed., § 4-184.)

Section references. — This section is referred to in §§ 1-633.3, 4-180, 4-181, and 4-182.

§ 4-184. Bonds.

The Mayor of the District of Columbia shall obtain a bond to secure the District against loss resulting from any act of dishonesty by any officer or member of the Metropolitan Police force. Bonds obtained under this section shall be in such amounts, and may secure the District against loss resulting from such other acts by officers and members of the Metropolitan Police force, as the Council of the District of Columbia shall consider appropriate. The Mayor may obtain such bonds by negotiation, without regard to § 1-1110, and shall pay the cost of such bonds out of funds appropriated for the expenses of the Metropolitan Police Department for fiscal years beginning after June 30, 1953. The premium on any such bond may cover periods not exceeding 3 years and may be paid in advance. (June 29, 1953, 67 Stat. 101, ch. 159, § 305(a); July 7, 1955, 69 Stat. 281, ch. 280, § 4; 1973 Ed., § 4-186.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(106) of Reorganization Plan No. 3 of 1967

(see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-185. Mobile laboratory.

The Metropolitan Police force shall maintain and operate a motor vehicle equipped with cameras, photographic developing equipment, an electrical generator, floodlights, and such other equipment as may be necessary to permit the use of the vehicle as a mobile laboratory to handle evidence at the scenes of crimes and otherwise to aid in the prevention and detection of crime. (June 29, 1953, 67 Stat. 101, ch. 159, § 307; 1973 Ed., § 4-187.)

§ 4-186. Expenditures for the prevention and detection of crime.

The Chief of Police of the Metropolitan Police Department is authorized, with the approval of the Mayor of the District of Columbia and within the limits of appropriations therefor, to make expenditures for the prevention and detection of crime under his certificate. The certificate of the Chief of Police for such expenditures shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (1973 Ed., § 4-188; Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 9.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-187. Attendance at pistol matches.

The Mayor of the District of Columbia is authorized to pay the expenses of officers and members of the Metropolitan Police Department and the Department of Corrections for attending pistol matches, including entrance fees, and is further authorized to permit officers and members to attend such matches without loss of pay or time. (1973 Ed., § 4-189; Oct. 26, 1973, 87 Stat. 506, Pub. L. 93-140, § 10.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of gov-

ernment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such

Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-188. Limitation on use of chokehold — Intent of Council.

The Council of the District of Columbia finds and declares that the use of restraints generally known as chokeholds by law enforcement officers constitutes the use of lethal force, and that the unrestricted use of force presents an unnecessary danger to the public. These conclusions are based upon the testimony presented at the police oversight hearing conducted by the Committee on the Judiciary on February 23, 1984. During the hearing, statistics were revealed indicating that there have been 2 civilian deaths in as many years caused by an officer's use of the chokehold. Therefore, it is the intent of the Council in the enactment of §§ 4-188 through 4-190 to specify the circumstances and procedures under which these restraints shall be permitted and to classify the chokehold as a service weapon. (Jan. 25, 1986, D.C. Law 6-77, § 2, 32 DCR 6497.)

Section references. — This section is referred to in §§ 4-189 and 4-190.

Legislative history of Law 6-77. — Law 6-77, the "Limitation on the Use of the Chokehold Act of 1985," was introduced in Council and assigned Bill No. 6-15, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 8, 1985, and October 22, 1985, respectively. Signed by the Mayor on Novem-

ber 4, 1985, it was assigned Act No. 6-100 and transmitted to both Houses of Congress for its review.

Mayor authorized to issue rules. — Section 5 of D.C. Law 6-77 provided that the Mayor may issue rules to implement the provisions of the act pursuant to subchapter I of Chapter 15 of Title 1.

§ 4-189. Same — Definitions.

For the purposes of §§ 4-188 through 4-190, the term:

(1) A "trachea hold," "arm bar hold," or "bar-arm hold" means any weaponless technique or any technique using the officer's arm, a long or short police baton, or a flashlight or other firm object that attempts to control or disable a person by applying force or pressure against the trachea, windpipe, or the frontal area of the neck with the purpose or intent of controlling a person's movement or rendering a person unconscious by blocking the passage of air through the windpipe.

(2) A "carotid artery hold," "sleeper hold," or "v hold" means any weaponless technique which is applied in an effort to control or disable a person by applying pressure or force to the carotid artery or the jugular vein or the sides of the neck with the intent or purpose of controlling a person's movement or rendering a person unconscious by constricting the flow of blood to and from the brain. (Jan. 25, 1986, D.C. Law 6-77, § 3, 32 DCR 6497.)

Section references. — This section is referred to in §§ 4-188 and 4-190.

Legislative history of Law 6-77. — See note to § 4-188.

Mayor authorized to issue rules. — See note to § 4-188.

Cited in *United States v. Holt*, 120 WLR 621 (Super. Ct. 1992).

§ 4-190. Same — Trachea hold prohibited; carotid artery hold restricted.

(a) The use of the trachea hold by any police officer shall be prohibited under any circumstances and the carotid artery hold shall be prohibited except under those circumstances and conditions under which the use of lethal force is necessary to protect the life of a civilian or a law enforcement officer, and has been effected to control or subdue an individual, and the Metropolitan Police Department has issued procedures and policies which require, at a minimum, all the following:

(1) That an officer shall have satisfactorily completed a course of training on the carotid artery hold;

(2) That the officer who has applied the carotid hold on an individual render that person immediate first aid and emergency medical treatment if the person becomes unconscious as a result of the hold pending immediate transport of the person to the hospital;

(3) That upon resuscitation of the unconscious person, the individual shall be transported immediately to an emergency medical facility for examination, treatment, and observation by a competent and qualified emergency medical technician or physician within a reasonable period of time not to exceed 1 hour; and

(4) That where the person rendered unconscious through the use of a hold is unconscious for a period of 3 minutes or more, or appears to be under the influence of alcohol or drugs, or has shown signs of acute mental disturbance, that person shall be immediately transported to an emergency medical or acute care facility for examination, treatment, or observation by competent and qualified medical personnel within a reasonable period not to exceed 1 hour.

(b) The failure to provide immediately appropriate medical aid as required in subsection (a)(3) and (4) of this section to a person who has been rendered unconscious or subdued by the use of a hold shall for purposes of civil liability create a presumption, affecting the burden of proof, of willful negligence and reckless disregard for the safety and well-being of that person.

(c)(1) Every police officer who under color of authority willfully and intentionally violates the standards prescribed in this section or any regulations issued pursuant to §§ 4-188 through 4-190 shall, upon conviction, be subject to a fine of \$5,000, or imprisonment not exceeding 1 year, or both, and removal from office.

(2) Such conduct shall also be subject to any civil remedies related to a violation of standards set forth in the police manual or general orders of the Metropolitan Police Department.

(d) The trachea hold is prohibited and the carotid artery hold shall be classified as a service weapon and all relevant Metropolitan Police Department

general orders, special orders, and circulars shall be applicable. (Jan. 25, 1986, D.C. Law 6-77, § 4, 32 DCR 6497.)

Section references. — This section is referred to in §§ 4-188 and 4-189.

Legislative history of Law 6-77. — See note to § 4-188.

Mayor authorized to issue rules. — See note to § 4-188.

Applicability. — Even if this section ap-

plies only to police officers, it is illegal for someone who is not a Metropolitan Police officer to use a chokehold, because such conduct comes within the definition of a common-law assault. *United States v. Holt*, 120 WLR 621 (Super. Ct. 1992).

CHAPTER 2. UNITED STATES PARK POLICE.

Sec.

4-201. United States watchmen to be known as United States Park Police; powers and duties.

4-202. Organization.

4-203. Equipment; extra compensation.

4-204. Medical attendance.

Sec.

4-205. Special police.

4-206. Arrests and execution of process on federal reservations in District.

4-207. Rules and regulations.

4-208. Environs of the District of Columbia defined.

§ 4-201. United States watchmen to be known as United States Park Police; powers and duties.

The watchmen provided by the United States government for service in any of the public squares and reservations in the District of Columbia shall, after August 5, 1882, be known as the "United States Park Police." They shall have and perform the same powers and duties as the Metropolitan Police of the District. (Aug. 5, 1882, 22 Stat. 243, ch. 389, § 1; Dec. 5, 1919, 41 Stat. 364, ch. 1, § 3; 1973 Ed., § 4-201.)

Cross references. — As to appointment of United States Park Police to the United States Secret Service Uniformed Division, see 3 U.S.C. § 203.

Park police are authorized to operate outside of parks themselves in the District of Columbia. United States Park Police officers have jurisdiction to make arrests anywhere in the District of Columbia. *Richardson v. United States*, App. D.C., 520 A.2d 692, cert. denied, 484 U.S. 917, 108 S. Ct. 267, 98 L. Ed. 2d 224 (1987).

Immunity of officers. — Officer defendants are not "absolutely immune" from liability for

their allegedly tortious conduct in enforcing D.C. law; they are entitled to raise the federal "qualified immunity" plea and will be shielded from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. *Martin v. Malhoyt*, 830 F.2d 237, rehearing denied, 833 F.2d 1049 (D.C. Cir. 1987).

Cited in *Washington Free Community, Inc. v. Wilson*, 426 F.2d 1213 (D.C. Cir. 1969); *United States v. Edelen*, App. D.C., 529 A.2d 774 (1987).

§ 4-202. Organization.

The United States Park Police shall be under the exclusive charge and control of the Director of the National Park Service. It shall consist of an active officer of the United States Army, detailed by the Department of the Army, 1 lieutenant with grade corresponding to that of lieutenant (Metropolitan Police), 1 first sergeant, 5 sergeants with grade corresponding to that of sergeant (Metropolitan Police), and 54 privates, all of whom shall have served 3 years to be with grade corresponding to private, class 3 (Metropolitan Police); all of whom shall have served 1 year to be with grade corresponding to private, class 2 (Metropolitan Police) and such others as the Director of the National Park Service deems necessary and are appropriated for by Congress; and all of whom shall have served less than 1 year to be with grade corresponding to private, class 1 (Metropolitan Police). (May 27, 1924, 43 Stat. 175, ch. 199, § 4; Feb. 26, 1925, 43 Stat. 983, ch. 339; July 3, 1926, 44 Stat. 834, ch. 760, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; 1973 Ed., § 4-202.)

Cross references. — As to age requirements for original appointments, see 5 U.S.C. § 3307. As to participation in Metropolitan Police Department Band, see § 4-180.

Cited in *Richardson v. United States*, App. D.C., 520 A.2d 692 (1987).

§ 4-203. Equipment; extra compensation.

The members of the United States Park Police force shall be furnished with uniforms, means of transportation, and such other equipment as may be necessary for the proper performance of their duties, including badges, revolvers, and ammunition; the United States Army officer detailed as Superintendent of the United States Park Police, who shall use on official business motor transportation furnished and maintained by himself, shall receive an extra compensation of not to exceed \$480 per annum. Members detailed to motorcycle service shall each receive an extra compensation of \$120 per annum. (May 27, 1924, 43 Stat. 175, ch. 199, § 6; 1973 Ed., § 4-204.)

Cross references. — As to grades, salaries and transfers of appointees to United States Secret Service Uniformed Division, see 3

U.S.C. § 204. As to uniforms required to display United States flag emblem, see § 4-127.

§ 4-204. Medical attendance.

The park watchmen on April 28, 1902, provided by law and those that may thereafter be provided for by law for service in any of the public squares and reservations in the District of Columbia, shall receive free medical attendance, the same as the Metropolitan Police of said District. (Apr. 28, 1902, 32 Stat. 152, ch. 594; 1973 Ed., § 4-206.)

§ 4-205. Special police.

The Director of the National Park Service, in his discretion, may appoint special policemen, without compensation, for duty in connection with the policing of the public parks and other reservations under his jurisdiction within the District of Columbia, such special policemen to have the same powers and perform the same duties as the United States Park Police and Metropolitan Police of said District of Columbia, and to be subject to such regulations as he may prescribe; provided, that the jurisdiction and police power of such special policemen shall be restricted to the public parks and other reservations under the control of the Director of the National Park Service. (May 27, 1924, 43 Stat. 176, ch. 199, § 9; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; 1973 Ed., § 4-208.)

Cross references. — As to special policemen, see § 4-114. As to suspension of retirement provisions during emergency, see § 4-618.

Park police are authorized to operate outside of parks themselves in the District

of Columbia. United States Park Police officers have jurisdiction to make arrests anywhere in the District of Columbia. *Richardson v. United States*, App. D.C., 520 A.2d 692, cert. denied, 484 U.S. 917, 108 S. Ct. 267, 98 L. Ed. 2d 224 (1987).

§ 4-206. Arrests and execution of process on federal reservations in District.

On and within roads, parks, parkways, and other federal reservations in the environs of the District of Columbia, the several members of the United States Park Police force shall have the power and authority to make arrests without warrant for any felony or misdemeanor committed in the presence or view of such members in violation of any federal law or regulation issued pursuant to law, or for any felony that in fact has been or is being committed in violation of any such law or regulation where they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony, and shall have power to take any person arrested by them, without unnecessary delay, before the federal court having jurisdiction over the offense or before a United States Magistrate specifically designated to try and sentence persons charged with petty offenses as provided in the Act of October 9, 1940 (54 Stat. 1058), or before any other officer having authority to hold or commit for the offense. Such police officers shall also have power upon such roads and within such parks, parkways, and other reservations to execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any federal law or regulation issued pursuant to law; provided, that the power and authority herein granted shall not extend to military personnel for offenses committed on military reservations; provided further, that the power and authority herein granted shall not limit or restrict the investigative jurisdiction of the Federal Bureau of Investigation. (Mar. 17, 1948, 62 Stat. 81, ch. 136, § 1; Aug. 18, 1970, 84 Stat. 826, Pub. L. 91-383, § 4; 1973 Ed., § 4-209.)

Cross references. — As to authority to arrest at Dulles International Airport and Washington National Airport, see §§ 7-1104 and 7-1208. As to warrantless arrest, see § 23-581.

Section references. — This section is referred to in § 4-208.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States Commissioner and established in place thereof the Office of United States

Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States Magistrates assumed the office pursuant to appointment by order of the District Court, dated June 20, 1969.

The Act of October 9, 1940 (54 Stat. 1058), referred to near the end of the first sentence of this section, was repealed by the Act of June 25, 1948, 62 Stat. 868, ch. 645.

§ 4-207. Rules and regulations.

The Secretary of the Interior, with the approval or concurrence of the head of the agency having jurisdiction or control of any road, park, parkway, or other federal reservation, or his duly authorized representative, is hereby authorized to make all needful rules and regulations for the regulation of traffic, for the protection of persons, property, health, and morals, to prevent breaches of the peace, to suppress affrays and unlawful assemblies and to aid in the enforcement of any of the rules and regulations so promulgated. To any rule or regulation there may be attached a reasonable penalty for the violation thereof not exceeding, however, a fine of not more than \$500, imprison-

ment for not exceeding 6 months, or both. (Mar. 17, 1948, 62 Stat. 81, ch. 136, § 2; 1973 Ed., § 4-210.)

Section references. — This section is referred to in § 4-208.

Permit requirements. — The provisions of the permit system adopted by the National Park Service for demonstrations must be enforced uniformly and without discrimination, should require a permit for every public gathering in areas for which a permit is required, should define "public gathering" in terms that do not impermissibly discriminate against First Amendment activity, and should avoid

administrative burdens by exempting from the permit requirement groups of less than a certain size. *Quaker Action Group v. Morton*, 516 F.2d 717 (D.C. Cir. 1975).

Waiver procedure for numerical limitation for gatherings at Lafayette Park, and its effectiveness for a reasonable period of time, is sufficient reason for the Secretary of the Interior to consider a similar waiver for the White House sidewalk. *Quaker Action Group v. Andrus*, 559 F.2d 716 (D.C. Cir. 1977).

§ 4-208. Environs of the District of Columbia defined.

For the purposes of §§ 4-206 to 4-208, the environs of the District of Columbia are hereby defined as embracing Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia, and Prince George's, Charles, Anne Arundel, and Montgomery Counties in Maryland. (Mar. 17, 1948, 62 Stat. 81, ch. 136, § 3; Aug. 18, 1970, 84 Stat. 826, Pub. L. 91-383, § 4; 1973 Ed., § 4-211.)

Cited in *Richardson v. United States*, App. D.C., 520 A.2d 692 (1987).

CHAPTER 3. FIRE DEPARTMENT.

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| <p>Sec.</p> <p>4-301. Area of service; division of District into fire companies; approval required for major changes in manner of fire protection.</p> <p>4-302. Appointments and promotions covered by civil service; selection of Fire Chief and Deputy Fire Chiefs; original appointment and transfer of privates; vacancies.</p> <p>4-303. Age limits in original appointments.</p> <p>4-304. Composition; 2-platoon system; services of veterinary surgeon; attendance by police surgeon.</p> <p>4-305. Workweek established; hours of duty; days off duty; holidays.</p> <p>4-306. Appropriations for uniforms and other equipment.</p> <p>4-307. Resignation without notice; engaging in strike; conspiracy to obstruct operations of Department.</p> <p>4-308. Firefighting Division — Recording annual and sick leave.</p> <p>4-309. Same — Accrue ment of annual leave;</p> | <p>Sec.</p> <p>adjustment of accumulated leave; transfers; maximum accumulations.</p> <p>4-310. Restrictions on leaving District; or being absent from duty; right to reside within District.</p> <p>4-311. Extra equipment authorized for volunteer fire organization.</p> <p>4-312. Use of certain buildings granted.</p> <p>4-313. Construction of apparatus.</p> <p>4-314. Reciprocal agreements for mutual aid; availability of personnel and equipment to federal government; service performed in line of duty.</p> <p>4-315. Services to District institutions located outside the District.</p> <p>4-316. Emergency ambulance service fees.</p> <p>4-317. Arson reporting.</p> <p>4-318. Cadet program — Authorized; purpose; preference for appointment; appropriations.</p> <p>4-319. Same — Rules.</p> |
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§ 4-301. Area of service; division of District into fire companies; approval required for major changes in manner of fire protection.

The Fire Department of the District of Columbia shall provide fire prevention and fire protection within the geographical boundaries of the District of Columbia. The District shall be divided into such fire companies, and other units as the Council of the District of Columbia may from time to time direct. Major changes in the manner the Department provides fire protection and fire prevention shall be approved by resolution of the Council. (June 20, 1906, 34 Stat. 314, ch. 3443, § 1; 1973 Ed., § 4-401; Apr. 7, 1977, D.C. Law 1-111, § 2, 23 DCR 9384.)

Cross references. — As to territorial area of District, see § 1-101. As to District of Columbia Residential, Commercial, and Institutional Structures Fire Protection Study Commission, see Chapter 31 of Title 2.

Legislative history of Law 1-111. — Law 1-111, the "Fire Department Operations Act of 1976," was introduced in Council and assigned Bill No. 1-377, which was referred to the Committee on Public Safety. The Bill was adopted on first and second readings on July 27, 1976, and September 15, 1976, respectively. Enacted without signature by the Mayor on January 7, 1977, it was assigned Act. No. 1-198 and transmitted to both Houses of Congress for its review.

Increase in number of operating compa-

nies in Fire Department approved. — Pursuant to Resolution 5-317, the "Fire Company Operation Resolution of 1983," effective September 6, 1983, the Council approved operation of 54 fire companies by the Fire Department of the District of Columbia, which include 32 engine companies, 17 aerial ladder companies, 4 rescue squads, and 1 fire boat.

Relocation of Engine Company No. 3. — Pursuant to Resolution 5-407, the "Relocation of Engine Company No. 3 Resolution of 1983," effective November 1, 1983, the Council authorized the relocation of Engine Company No. 3.

Redesignation of fire department. — See Mayor's Order 90-147, October 31, 1990.

Discrimination in service unfounded. — A claim that the District of Columbia had dis-

criminated in the provision of municipal services failed to show substantial differences in services provided to a section of the District

which was 90% black as compared to area which was 98% white. *Burner v. Washington*, 399 F. Supp. 44 (D.D.C. 1975).

§ 4-302. Appointments and promotions covered by civil service; selection of Fire Chief and Deputy Fire Chiefs; original appointment and transfer of privates; vacancies.

The Mayor of the District of Columbia shall appoint, assign to such duty or duties as he may prescribe, promote, reduce, fine, suspend, with or without pay, and remove all officers and members of the Fire Department of the District of Columbia, according to such rules and regulations as the Council of the District of Columbia, in its exclusive jurisdiction and judgment (except as herein otherwise provided), may from time to time make, alter, or amend; provided, that the rules and regulations of the Fire Department heretofore promulgated are hereby ratified (except as herein otherwise provided) and shall remain in force until changed by said Council; provided further, that all officers, members, and civilian employees of such Department, except the Fire Chief and Deputy Fire Chiefs, shall be appointed and promoted in accordance with the provisions of §§ 1101 to 1103, 1105, 1301 to 1303, 1307, 1308, 2102, 2951, 3302 to 3306, 3318, 3319, 3321, 3361, 7202, 7321, 7322, and 7352 of Title 5, United States Code, and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States, except as herein otherwise provided; provided further, that the Fire Chief of the Fire Department shall be selected from among the Deputy Fire Chiefs, the battalion fire chiefs, the Fire Marshal and the superintendent of machinery; the Deputy Fire Chiefs shall be selected from among the battalion fire chiefs, the Fire Marshal, and the superintendent of machinery; provided further, that all original appointments of privates shall be made to class 1, privates who have served 1 year in class 1 shall, if found efficient, be transferred to class 2, and privates who have served 2 years in class 2 shall, if found efficient, be transferred to class 3. Such transfers shall not be subject to the provisions of said sections of Title 5, United States Code, and the rules and regulations made in pursuance thereof. Whenever vacancies occur in class 2 or 3 which cannot be filled by such transfers, the Mayor may appoint additional privates in class 1 equal in number to the positions vacant in class 2 or 3; and any moneys appropriated for the payment of the salaries for such vacant positions shall be available to pay to such additional privates of class 1 the salaries of their grade. (June 20, 1906, 34 Stat. 314, ch. 3443, § 2; Jan. 24, 1920, 41 Stat. 396, ch. 54; 1973 Ed., § 4-402.)

Cross references. — As to rules and regulations, see § 1-319. As to participation in activities of Metropolitan Police Department Band, see § 4-179. As to removal of officer for engaging in strikes, see § 4-307. As to suspension of retirement provisions during emergency, see § 4-618. As to firemen receiving awards for meritorious service in line of duty given prefer-

ence for promotions, see § 4-703. As to removal of members, see §§ 4-801 to 4-804. As to exemption from military service, see § 39-102.

Section references. — This section is referred to in § 1-633.3.

References in text. — Former 5 U.S.C. § 3306, referred to in the second proviso of the first sentence, was repealed February 10, 1978,

92 Stat. 25, Pub. L. 95-228, § 1. 5 U.S.C. § 3319 was repealed October 13, 1978, 92 Stat. 1149, Pub. L. 95-454, § 307. For provisions similar to these repealed sections, see 5 U.S.C. § 7201 et seq., generally. Former 5 U.S.C. § 7152 was transferred October 13, 1978, by 92 Stat. 1216, Pub. L. 95-454 to 5 U.S.C. § 7202. Appropriate changes have been made in the text of this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(107) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Chief Engineer abolished. — The Office of Chief Engineer of the Fire Department was abolished and all functions of that office transferred to and vested in the Fire Chief. The Deputy Chief Engineer of the Fire Department was designated "Deputy Fire Chief," and the Battalion Chief Engineer was

designated "Battalion Fire Chief" by Reorganization Order No. 6, dated September 16, 1952, issued pursuant to Reorganization Plan No. 5 of 1952. Reorganization Order No. 38, dated June 18, 1953, established a Fire Department headed by the Fire Chief. The Fire Chief was given full authority over the Department to be exercised in accordance with applicable laws, rules, and regulations. The Order set up the organization of the Department, and provided that the previously existing Fire Department was abolished and its functions transferred to the new Department. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. Reorganization Order No. 38 was amended by Mayor's Order 81-233a, dated November 9, 1981. That Order set forth the organization of the Fire Department.

Height requirement. — An employment practice requiring firemen to be at least 5 feet 7 inches, a requirement not related to job performance and not required by state interest, violated Civil Service Commission employment regulation applicable to the District of Columbia. *Fox v. Washington*, 396 F. Supp. 504 (D.D.C. 1975).

Other compensable work prohibited. — The Council of the District may prohibit Department employees from performing other work for compensation. *Reichelderfer v. Ihrie*, 59 F.2d 873 (D.C. Cir.), cert. denied, 287 U.S. 631, 53 S. Ct. 82, 77 L. Ed. 547 (1932).

Discriminatory motivation in promotion to assistant fire chief. — See *Bishop v. District of Columbia*, 788 F.2d 781 (D.C. Cir. 1986).

Cited in *Matthews v. Washington*, 424 F. Supp. 97 (D.D.C. 1976); *Dougherty v. Barry*, 607 F. Supp. 1271 (D.D.C. 1985); *Dougherty v. Barry*, 869 F.2d 605 (D.C. Cir. 1989).

§ 4-303. Age limits in original appointments.

The Council of the District of Columbia is hereby authorized to determine and fix the minimum and maximum limits of age within which original appointments to the Fire Department may be made. (Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4; 1973 Ed., § 4-403.)

Cross references. — As to age limits on appointments to Metropolitan Police Department, see § 4-109.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section

402(108) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-304. Composition; 2-platoon system; services of veterinary surgeon; attendance by police surgeon.

The Fire Department of the District of Columbia shall be composed of and operated upon a 2-platoon system and the personnel thereof shall consist of 1 Fire Chief; such number of Deputy Fire Chiefs, all of whom shall have had at least 5 years of experience in some regularly organized municipal fire department, and battalion fire chiefs as said Mayor of the District of Columbia may deem necessary from time to time within the appropriations made by Congress; 1 fire marshal; such number of deputy fire marshals, inspectors, and clerks as said Mayor may deem necessary from time to time within the appropriations made by Congress; such number of captains, lieutenants, and sergeants as said Mayor may deem necessary from time to time within the appropriations made by Congress; 1 superintendent of machinery; and such number of assistant superintendents of machinery, pilots, marine engineers, assistant marine engineers, marine firemen, privates of class 6, privates of class 5, privates of class 4, privates of class 3, privates of class 2, privates of class 1, hostlers, and laborers as said Mayor may deem necessary from time to time within the appropriations made by Congress; provided, that the Fire Chief of the Fire Department of the District of Columbia shall have the right to call for and obtain the services of any veterinary surgeon employed by the District who at the time shall not be engaged in a more emergent veterinary service for the District; provided further, that the police surgeons of said District are required to attend, without charge, the members of the Fire Department of said District, and examine all applicants for appointment to, promotion in, and retirement from said Fire Department. (June 20, 1906, 34 Stat. 314, ch. 3443, § 3; Jan. 24, 1920, 41 Stat. 397, ch. 54; June 19, 1948, 62 Stat. 498, ch. 530, § 1; 1973 Ed., § 4-404.)

Cross references. — As to annual leave, see 5 U.S.C. §§ 6303 and 6304. As to sick leave, see 5 U.S.C. §§ 6307 and 6324. As to awards for meritorious service of firemen in line of duty, see § 4-702. As to certification that certain businesses have complied with safety regulations before business license can be issued, see § 47-2802.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Chief Engineer abolished. — See note to § 4-302.

§ 4-305. Workweek established; hours of duty; days off duty; holidays.

(a) Beginning with the 1st day of the 1st pay period which begins not less than 120 days after enactment of this amendatory subsection or which begins on or after July 1, 1962, whichever is later, the Mayor of the District of Columbia is authorized and directed to establish a workweek for officers and members of the Firefighting Division of the Fire Department of the District of Columbia which will result in an average workweek of not to exceed 48 hours during an administratively established workweek cycle which the Mayor is hereby authorized to establish from time to time.

(b) The Firefighting Division shall operate under a 2-shift system and all hours of duty of any shift shall be consecutive.

(c) The Mayor of the District of Columbia is further authorized and directed to establish a workweek for officers and members of the Fire Department, other than those in the Firefighting Division, of 40 hours, and the hours of work in such workweek shall be performed on consecutive days in such workweek: Provided, that notwithstanding the provisions of this subsection, the Mayor of the District of Columbia or his designated agent or agents may, whenever the exigencies of the Fire Department require temporary or short-term services of 1 or more officers or members, order such officer, officers, member, or members to perform such services.

(d) The days off duty to which each officer or member of the Fire Department is entitled shall be in addition to his annual leave and sick leave allowed by law. In the case of any shift of the Fire Department beginning on 1 day and extending without a break in continuity into the next day, or in the case of 2 shifts beginning on the same day, the Mayor is authorized to designate the shift which shall be the workday, and the entire shift so designated shall be considered the workday for all pay and leave purposes.

(e) If a holiday shall fall on any day off of any officer or member of the Fire Department, he shall be excused from duty on such other day as is designated by the Mayor of the District of Columbia, and if he is required to be on duty in lieu of such day off, he shall receive compensation for such duty at the rate provided by law for duty performed on a holiday. When any shift of the Fire Department begins on the day before a holiday and extends without a break in continuity into the holiday, or begins on a holiday and extends without a break in continuity into the next day, the Mayor of the District of Columbia is authorized to designate either of such shifts as the holiday workday, and the entire shift so designated shall be considered as the holiday workday for all pay and leave purposes. As used in this subsection, the word "holiday" shall have the same meaning as such word has in § 4-403, and as supplemented by § 6103 of Title 5, United States Code. (June 19, 1948, 62 Stat. 498, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2; Oct. 5, 1961, 75 Stat. 830, Pub. L. 87-399, §§ 1, 2; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, §§ 1, 2; Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89-282, § 2; 1973 Ed., § 4-404a.)

Cross references. — As to annual and sick leave, see 5 U.S.C. §§ 6303, 6304, 6307, and 6324. As to formula for recording annual and sick leave, see § 4-308. As to retirement and disability, see § 4-607 et seq. As to compensatory time, establishment of workweek, and overtime pay, see § 4-1104.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-306. Appropriations for uniforms and other equipment.

For furnishing uniforms and all other official equipment prescribed by Department regulations as necessary and requisite in the performance of duty, there is hereby authorized to be appropriated a sum not exceeding \$75 per annum for each member of the Fire Department of the District of Columbia, to be expended subject to rules and regulations to be prescribed by the Mayor of the District of Columbia. (May 25, 1926, 44 Stat. 635, ch. 381; 1973 Ed., § 4-406.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-307. Resignation without notice; engaging in strike; conspiracy to obstruct operations of Department.

(a) No officer or member of said Fire Department, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the Mayor of the District of Columbia, unless he shall have given the said Mayor 1 month previous notice, in writing, of such intention.

(b) No member of the Fire Department of the District of Columbia shall directly or indirectly engage in any strike of such Department. Upon sufficient proof to the Mayor of the District of Columbia that any member of the Fire Department of the District of Columbia has violated the provisions of this subsection, it shall be the duty of the Mayor of the District of Columbia to immediately discharge such member from the service.

(c) Any member of the Fire Department of the District of Columbia who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the Fire Department of the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$300 or by imprisonment of not more than 6 months, or by both. (June 20, 1906, 34 Stat. 315, ch. 3443, § 5; Jan. 24, 1920, 41 Stat. 398, ch. 54, § 2; July 31, 1939, 53 Stat. 1143, ch. 397; 1973 Ed., § 4-407.)

Cross references. — As to proceedings for removal of members, see § 4-302.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-308. Firefighting Division — Recording annual and sick leave.

(a) For the purpose of recording annual and sick leave on the hourly basis for officers and members of the Firefighting Division of the Fire Department of the District of Columbia, the workday of any workweek shall be considered to be 12 hours.

(b) For the purposes of recording on an hourly basis annual and sick leave taken by officers and members of the Firefighting Division, the following formula shall be used:

(1) During the day shift of 10 hours, one and two-tenths hours of leave shall be charged for each hour taken;

(2) During the night shift of 14 hours, twelve-fourteenths of an hour of leave shall be charged for each hour taken, calculated to the nearest fractional tenth. (Oct. 5, 1961, 75 Stat. 832, Pub. L. 87-399, § 6; 1973 Ed., § 4-408a.)

Cross references. — As to annual and sick leave, see 5 U.S.C. §§ 6303, 6304, 6307, and 6324.

Section references. — This section is referred to in § 1-633.3.

§ 4-309. Same — Accrual of annual leave; adjustment of accumulated leave; transfers; maximum accumulations.

(a) In lieu of the annual leave to which officers and members of the Firefighting Division of the Fire Department of the District of Columbia are enti-

tled under the provisions of §§ 6302 to 6305, and 6310 of Title 5, United States Code, such officers and members shall be entitled to annual leave which shall accrue as follows:

(1) Four and eight-tenths hours for each full biweekly pay period in the case of officers and members with less than 3 years service;

(2) Seven and five-tenths hours for each full biweekly pay period in the case of officers and members with 3 but less than 15 years service;

(3) Nine and six-tenths hours for each biweekly pay period in the case of officers and members with 15 years or more service.

(b) Accumulated annual leave to the credit of each officer and member of such Firefighting Division shall be adjusted by applying a four fifths factor so that each officer and member of such Firefighting Division shall be given credit for four fifths of a day of leave for each day of such accumulated annual leave, and thereafter accumulated annual leave credited to him pursuant to §§ 6301 to 6305 and 6307 to 6311 of Title 5, United States Code, shall be similarly adjusted when an officer or member is transferred to the Firefighting Division from another agency or from another division of the Fire Department.

(c) When an officer or member of such Firefighting Division is transferred to another agency or to another division of the Fire Department whose employees are entitled to annual leave with pay pursuant to §§ 6301 to 6305 and 6307 to 6311 of Title 5, United States Code, the reverse of the formula in subsection (b) of this section shall be applied for the purpose of adjusting accumulated annual leave.

(d) For computation on an hourly basis, all adjusted days of annual leave or fractions thereof, as provided in subsections (b) and (c) of this section, and days of sick leave shall be multiplied by 12 to determine the number of hours of annual or sick leave to which each such officer or member of such Firefighting Division shall be entitled, and the number of hours of annual or sick leave shall be divided by 12 to determine the number of days, or fraction thereof, of annual or sick leave to which such officer or member of such Firefighting Division shall be entitled.

(e) Notwithstanding any provision in any other law, the amount of annual leave accumulated on the effective date of this section, if 30 days or more, shall, upon conversion to the new total in accordance with this section, be the maximum accumulation authorized; provided, that if the amount of annual leave accumulated before the conversion is less than 30 days on the effective date of this section, then, after conversion to the new total, leave which is not used shall accumulate for use in succeeding years until it totals no more than 24 days at the beginning of the 1st complete biweekly pay period. (Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, § 4; 1973 Ed., § 4-408b.)

Cross references. — As to annual leave, see §§ 4-305 and 4-405.

Section references. — This section is referred to in § 1-633.3.

References in text. — The "effective date of this section," referred to twice in subsection (e), is prescribed by § 5 of the Act of September 25, 1962, 76 Stat. 596, Pub. L. 87-697.

§ 4-310. Restrictions on leaving District; or being absent from duty; right to reside within District.

No member of the Fire Department of the District of Columbia shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission. Nothing in this section shall be construed to limit the right of officers and members of the Fire Department to reside anywhere within the Washington, District of Columbia, Metropolitan District. (July 25, 1956, 70 Stat. 647, ch. 726, § 2; Aug. 21, 1964, 78 Stat. 583, Pub. L. 88-471, § 6(f); 1973 Ed., § 4-409a.)

Cross references. — As to territorial extent of Metropolitan District, and residence requirements of officers or members of Fire Department, see § 4-129. As to retirement for disability

incurred in performance of duty, see §§ 4-615 and 4-616.

Section references. — This section is referred to in §§ 1-633.3 and 4-129.

§ 4-311. Extra equipment authorized for volunteer fire organization.

The Mayor of the District of Columbia is authorized to install under such rules and regulations as the Council of the District of Columbia may prescribe, in any suburb of the said District, such extra apparatus and appliances belonging to the Fire Department of the District of Columbia as may, in his opinion, be available for the use of any volunteer fire organization which may be created in such suburb; and such apparatus and appliances shall be maintained in proper condition for service by the purchase of the necessary supplies out of the appropriations provided for the Fire Department of the District of Columbia. (May 26, 1908, 35 Stat. 298, ch. 198; 1973 Ed., § 4-411.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(109) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-312. Use of certain buildings granted.

The right of use and occupancy of the buildings and appurtenances known as the Union, Franklin, Columbia, and Anacostia Engine Houses, granted to the City of Washington for the purposes of the Fire Department, shall continue during the pleasure of Congress so long as used for such purposes. (R.S., D.C., § 192; Feb. 27, 1877, 19 Stat. 253, ch. 69, § 2; 1973 Ed., § 4-412.)

§ 4-313. Construction of apparatus.

On and after June 29, 1956, the Mayor of the District of Columbia in his discretion may authorize the construction, in whole or in part, of firefighting apparatus in the Fire Department repair shop. (June 29, 1956, 70 Stat. 443, ch. 479, § 1; 1973 Ed., § 4-413.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-314. Reciprocal agreements for mutual aid; availability of personnel and equipment to federal government; service performed in line of duty.

(a) The Council of the District of Columbia is hereby authorized in its discretion to enter into and to renew reciprocal agreements, for such period as it deems advisable, with the appropriate county, municipal, and other governmental units in Prince George's and Montgomery Counties, Maryland, and Arlington and Fairfax Counties, Virginia, with the City of Alexandria, Virginia, with the City of Falls Church, Virginia, and with incorporated or unincorporated fire departments, fire companies, and organizations of firemen in such Counties and Cities, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of firefighting personnel and equipment, by and for the District of Columbia and such Counties and Cities, for the extinguishment of fires and for the preservation of life and property in emergencies, in the District and in such Counties and Cities.

(b) The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall:

(1) Waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement; and

(2) Indemnify and save harmless the other parties to such agreement from all claims by 3rd parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement.

(c) The Mayor of the District of Columbia is hereby authorized to make available to the federal government personnel and equipment of the Fire Department of the District to extinguish fires, and to save lives, on property of the federal government in Prince George's and Montgomery Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the City of Alexandria, Virginia; and the City of Falls Church, Virginia.

(d) For the purposes of §§ 4-607 to 4-630, service performed by any officer or member of the Fire Department of the District of Columbia under any mutual-aid agreement entered into by the District pursuant to this section, service performed by any officer or member of the Fire Department of the District of Columbia at any other city, area, municipality, or other location where they shall have been directed to respond for the purpose of saving lives, extinguishing fires, or preserving property on orders of the Mayor of the District of Columbia or of the Fire Chief of said Fire Department or his acting designee, and service performed under subsection (c) of this section by any such officer or member in extinguishing fires, or saving lives, on property of the federal government, shall be held and considered to be service performed in line of duty. (Aug. 14, 1950, 64 Stat. 441, ch. 706, §§ 1-4; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88-473, § 1; 1973 Ed., § 4-414.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(110) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Chief Engineer abolished. — See note to § 4-302.

§ 4-315. Services to District institutions located outside the District.

The Mayor of the District of Columbia is authorized to make provisions and payment for the furnishing of fire prevention and fire protection services to District of Columbia government institutions located outside the District of Columbia. (1973 Ed., § 4-415; Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 8.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-316. Emergency ambulance service fees.

The Mayor of the District of Columbia is authorized, after a public hearing, to establish from time to time a fee to be charged for transportation services provided by the emergency ambulance service of the Fire Department in such amount as may be reasonable in consideration of the interests of the public

and the persons required to pay the fee, and in consideration of the approximate cost of furnishing such services; provided, that no one shall be denied the services because of his or her inability to pay and further provided that no one shall be questioned about his or her ability to pay at the time the services are requested. (1973 Ed., § 4-416; Apr. 19, 1977, D.C. Law 1-124, § 502, 23 DCR 8749.)

Legislative history of Law 1-124. — Law 1-124, the "Revenue Act for Fiscal Year 1978," was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Emergency Ambulance Division established. — Mayor's Order 81-233a, dated November 9, 1981, established an Emergency Ambulance Division in the Fire Department. The Order set forth the functions and supervision of the Division.

The public duty doctrine applies to conduct of the District's Emergency Ambulance Division in the same way that it applies to conduct of the police and fire departments, notwithstanding the fact that the District may charge a user fee for ambulance service. *Johnson v. District of Columbia*, App. D.C., 580 A.2d 140 (1990).

The actions of the District and its employees in connection with the dispatch of emergency medical care, equipment and transportation to plaintiff were shielded by the public duty doc-

trine. *Hines v. District of Columbia*, App. D.C., 580 A.2d 133 (1990).

Special duty analysis for determining tort liability. — Operation of the Emergency Medical Service is an exercise of the District's police power to further the general health and welfare, user fees notwithstanding. Therefore, the District's public ambulance service is equivalent to its police and fire protection, so that a special duty analysis must be applied in determining potential tort liability. *Wanzer v. District of Columbia*, App. D.C., 580 A.2d 127 (1990).

Special duty or relationship not established. — Emergency Medical Service protocols and procedures do not impose a special duty on the District for the benefit of a protected class, namely, sick people. *Wanzer v. District of Columbia*, App. D.C., 580 A.2d 127 (1990).

A one-time call to 911 for help does not establish a special relationship for the purposes of establishing tort liability. *Wanzer v. District of Columbia*, App. D.C., 580 A.2d 127 (1990).

Challenges to the adequacy and timeliness of the dispatch of emergency equipment fail to meet the requirements for a special relationship, even where a dispatcher has assured that help is on its way. *Johnson v. District of Columbia*, App. D.C., 580 A.2d 140 (1990).

§ 4-317. Arson reporting.

(a) If the Fire Marshal or any agency empowered to investigate the cause of, or circumstances attendant upon, a fire loss involving real or personal property within the District of Columbia or empowered to institute criminal prosecutions for criminal acts causing, or related to, a fire loss has reason to believe that a fire was caused by other than accidental means, the Fire Marshal or such authorized agency may require, by written demand, any insurer investigating a fire loss to release any relevant information in its possession relating to that fire loss. Relevant information may include, but is not limited to:

- (1) The insurance policy in force;
- (2) Applications for an insurance policy;
- (3) The premium payments record;
- (4) The history of previous claims made; and

(5) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

(b) Whenever an insurer has reason to believe that a fire loss in which it has an interest may have been caused by other than accidental means, the insurer shall, for the purpose of having the fire loss investigated, notify the Fire Marshal or an authorized agency in writing and furnish the Fire Marshal or such agency with all relevant information acquired during its investigation of the fire loss.

(c) No insurer (or person acting on behalf of an insurer) who in good faith furnished information pursuant to subsection (a) or (b) of this section shall be liable therefor.

(d) Any information or evidence furnished pursuant to subsection (a) or (b) of this section shall be held in confidence by and among the Fire Marshal and authorized agencies, except that such information or evidence may be released in a criminal or civil proceeding in accordance with applicable court rules.

(e) Whoever shall knowingly: (1) Refuse to release any information requested pursuant to subsection (a) of this section; (2) fail to notify or supply information to the Fire Marshal or an authorized agency pursuant to subsection (b) of this section; or (3) fail to hold in confidence information required to be held in confidence in accordance with the provisions of subsection (d) of this section shall be fined not more than \$10,000. (June 19, 1982, D.C. Law 4-19, § 2(a)-(e), 29 DCR 1952.)

Section references. — This section is referred to in § 1-1524.

Legislative history of Law 4-119. — Law 4-119, the "District of Columbia Arson Reporting Immunity Act of 1982," was introduced in Council and assigned Bill No. 4-135, which was referred to the Committee on the Judiciary.

The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on May 4, 1982, it was assigned Act No. 4-182 and transmitted to both Houses of Congress for its review.

§ 4-318. Cadet program — Authorized; purpose; preference for appointment; appropriations.

(a) The Chief of the District of Columbia Fire Department may establish a firefighter cadet program for the purpose of instructing, training, and exposing interested persons, primarily young adults residing in the District of Columbia, to the operations of the District of Columbia Fire Department and the duties, tasks, and responsibilities of serving as a firefighter with the District of Columbia Fire Department.

(b) A person successfully completing the required training and service in a cadet program established pursuant to this section shall be accorded full preference for appointment as a member of the Metropolitan Police Department or of the District of Columbia Fire Department, if the person shall have met all other requirements pertaining to membership in the chosen Department.

(c) There may be appropriated the funds necessary for the administration of this section. (Mar. 9, 1983, D.C. Law 4-172, § 2(b)-(d), 29 DCR 5745.)

Cross references. — As to funding and administration of police officer or firefighter cadet training programs, see § 31-2212.

Section references. — This section is referred to in §§ 4-107.2 and 4-319.

Legislative history of Law 4-172. — Law 4-172, the "Police Officer and Firefighter Cadet Programs Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982," was introduced in Council and assigned

Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

§ 4-319. Same — Rules.

The Mayor or the Mayor's designated agent may issue rules necessary for the implementation and operation of the cadet programs established pursuant to §§ 4-107.1 and 4-318. (Mar. 9, 1983, D.C. Law 4-172, § 6, 29 DCR 5745.)

Legislative history of Law 4-172. — See note to § 4-318.

CHAPTER 4. SALARIES.

Sec.

- 4-401. Increase denied for unsatisfactory service; removal for inefficiency; additional compensation for outstanding efficiency.
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- 4-411. Technicians' positions.
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§ 4-401. Increase denied for unsatisfactory service; removal for inefficiency; additional compensation for outstanding efficiency.

No annual increase in salary shall be paid to any person who, in the judgment of the Mayor of the District of Columbia, has not rendered satisfactory service, and any private who fails to receive such annual increase for 2 successive years shall be deemed inefficient and forthwith removed from the service by the Mayor; provided, that under such rules and regulations as the Council of the District of Columbia shall promulgate, the Chief of Police and the Fire Chief of the Fire Department shall select and report to the Mayor from time to time the names of privates and sergeants in each Department who by reason of demonstrated ability may be considered as possessed of outstanding efficiency, and the Mayor is authorized and directed to grant to not exceeding 10% of the authorized strength, respectively, of such privates and sergeants in each Department additional compensation at the rate of \$5 per month; provided further, that the Mayor may withdraw such compensation at any time and remove any name or names from among such selections. (July 1, 1930, 46 Stat. 840, ch. 783, § 4; 1973 Ed., § 4-802.)

Cross references. — As to rules and regulations, see § 1-319. As to discharge of policeman at end of probationary period, see § 4-106. As to prohibition against acceptance of fees or presents in addition to salary, except by consent of Mayor, see § 4-125. As to periodic step-increases, see § 4-412. As to demotion, see § 4-414.

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(111) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Major and Superintendent of Metropolitan Police abolished. — See note to § 4-104.

Office of Chief Engineer abolished. — See note to § 4-302.

§ 4-402. Compensation for working on holidays.

Under regulations promulgated by the Council of the District of Columbia, each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia, when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation; provided, that for the purpose of §§ 4-402 to 4-404, each such officer or member who works 8 hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting 30 minutes or more as a full hour; provided further, that, when an officer or member is authorized or directed to work on a holiday and such officer or member is required to work longer than his regular tour of duty, he shall be compensated for such overtime in accordance with the provisions of subsection (e) of § 4-1104. Appropriations for personal services for the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Secret Service Uniformed Division, and the United States Park Police force shall be available for payment of the additional compensation authorized by §§ 4-402 to 4-404. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 4(a); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 4; Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89-282, § 3; 1973 Ed., § 4-807; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-633.3, 4-403, and 4-404.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(112) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the

Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-403. "Holiday" defined.

As used in § 4-402, the word "holiday" means the following: The 1st day of January, the 3rd Monday in February, the 4th day of July, the last Monday in May, the 1st Monday in September, the 2nd Monday in October, the 4th Monday in October, Thanksgiving Day, the 25th day of December, and, with respect to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, such other holidays as may be designated by the Council of the District of Columbia, and with respect to officers and members of the United States Secret Service Uniformed Division and the United States Park Police force, such other holidays as may be designated by executive order. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 2; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 4(b); 1973 Ed., § 4-808; Sept. 3, 1974, 88 Stat. 1038, Pub. L. 93-407, title I, § 102; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-633.3, 4-305, 4-402, and 4-404.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(113) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the

Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-404. Applicability of §§ 4-402 to 4-404 to United States Secret Service Uniformed Division and United States Park Police force.

The provisions of §§ 4-402 to 4-404 shall be applicable to the United States Secret Service Uniformed Division and the United States Park Police force, under regulations promulgated by the Secretary of the Treasury and the Secretary of the Interior, respectively. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 3; 1973 Ed., § 4-809; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-633.3, 4-402, and 4-403.

§ 4-405. Computation of rates of compensation.

(a) For all pay computation purposes affecting employees covered by this act or the District of Columbia Police and Firemen's Salary Act of 1958, basic per annum rates of compensation established by this act or the District of Columbia Police and Firemen's Salary Act of 1958, shall be regarded as payment for employment during 52 basic administrative workweeks.

(b)(1) Whenever for any such purpose it is necessary to convert a basic annual rate established by this act or the District of Columbia Police and Firemen's Salary Act of 1958 to a basic biweekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by 52 or 26, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by 5 or 10, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by 2 to derive a one-half daily rate;

(D) In the case of the Metropolitan Police force, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate;

(E) In the case of the Firefighting Division of the Fire Department of the District of Columbia:

(i) A biweekly rate shall be divided by 2 to derive a weekly rate;

(ii) The weekly rate shall be divided by the number of workdays in the average established workweek to arrive at a daily rate;

(iii) A daily rate shall be divided by 2 to derive a one-half daily rate; and

(iv) An hourly rate shall be determined by dividing the daily rate of pay by 12, except for the purpose of computation of holiday pay; and

(F) In the case of officers and members of divisions of the Fire Department of the District of Columbia other than the Firefighting Division, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

(2) All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent.

(c) For all officers and employees referred to in this act, or the District of Columbia Police and Firemen's Salary Act of 1958, each pay period shall cover 2 administrative workweeks except that with respect to employees of the Fire Department the 1st pay period shall be for the period July 1 to July 11, 1953, inclusive. (June 20, 1953, 67 Stat. 76, ch. 146, title IV, § 405; July 20, 1953, 67 Stat. 182, ch. 231, § 1; June 25, 1956, 70 Stat. 338, ch. 446, § 1; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 5; Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 502(b); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 5; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87-697, § 3; 1973 Ed., § 4-821.)

Section references. — This section is referred to in § 1-633.3.

References in text. — "This act," referred to throughout this section, means the Act of June 20, 1953.

The District of Columbia Police and Firemen's Salary Act of 1958, referred to throughout this section, is codified in § 4-406 et seq.

§ 4-406. Salary schedule; maximum compensation permitted.

(a) Except as provided in subsection (b) of this section, the annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

Salary class and title	Service Step								
	1	2	3	4	5	6	7	8	9
Class 1: Fire private, police private	\$12,296	\$12,667	\$13,282	\$13,897	\$14,877	\$15,863	\$16,478	\$17,093	\$17,707
Class 2: Fire inspector	14,019	14,877	15,741	16,600	17,458	18,322	19,181	.....	.....
Class 3: Detective, assistant pilot, assistant marine engineer	15,370	16,139	16,907	17,676	18,444	19,213	19,981	.....	.....
Class 4: Fire sergeant, police sergeant, detective sergeant	16,700	17,532	18,370	19,207	20,045	20,877	.....	.....	.....
Class 5: Fire lieutenant, police lieutenant	19,303	20,273	21,237	22,202	23,166	.....	.....	.....	.....
Class 6: Marine engineer, pilot	21,089	22,138	23,193	24,242	.....	.....	.....	.....	.....
Class 7: Fire captain, police captain	22,870	24,014	25,159	26,299	.....	.....	.....	.....	.....
Class 8: Battalion fire chief, police inspector	26,511	27,836	29,166	30,496	.....	.....	.....	.....	.....
Class 9: Deputy Fire Chief, Deputy Chief of Police	31,111	33,215	35,325	37,434	.....	.....	.....	.....	.....
Class 10: Assistant Chief of Police, Assistant Fire Chief	36,888	39,347	41,806	.....	.....	.....	.....	.....	.....
Class 11: Fire Chief, Chief of Police	42,665	45,251	.....	.....	.....	.....	.....	.....	.....

(b) Compensation may not be paid, by reason of any provision of this Act, at a rate in excess of the rate of basic pay for level V of the Executive Schedule contained in subchapter II of Chapter 53 of Title 5, United States Code. (Aug. 1, 1958, 72 Stat. 481, Pub. L. 85-584, title I, § 101; Oct. 24, 1962, 76 Stat. 1239, Pub. L. 87-882, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88-426, title III, § 306(i)(6); Sept. 2, 1964, 78 Stat. 880, Pub. L. 88-575, title I, § 101; Nov. 13, 1966, 80 Stat. 1591, Pub. L. 89-810, title I, § 101; May 27, 1968, 82 Stat. 140, Pub. L. 90-320, § 1(a); May 27, 1968, 82 Stat. 141, Pub. L. 90-320, § 1(b); June 30, 1970, 84 Stat. 354, Pub. L. 91-297, title I, § 102; Dec. 7, 1970, 84 Stat. 1391, Pub. L. 91-530, § 3; Aug. 29, 1972, 86 Stat. 634, Pub. L. 92-410, title I, §§ 101, 102; 1973 Ed., § 4-823; Sept. 3, 1974, 88 Stat. 1036, Pub. L. 93-407, title I, § 101(a)(1); Jan. 3, 1975, 88 Stat. 2173, Pub. L. 93-635, § 1; June 19, 1976, D.C. Law 1-73, § 2(1), 23 DCR 2807.)

Cross references. — As to exemption of officers and members of Metropolitan Police and Fire Department of District of Columbia from federal employee classification laws, see 5 U.S.C. § 5102.

Section references. — This section is referred to in §§ 1-612.13, 1-633.3, 4-410, 4-411, 4-415, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

Legislative history of Law 1-73. — Law

1-73, the "District of Columbia Police and Fireman's Salary Act Amendments of 1975," was introduced in Council and assigned Bill No. 1-235, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on March 9, 1976, and March 23, 1976, respectively. Signed by the Mayor on April 30, 1976, it was assigned Act No. 1-109 and transmitted to both Houses of Congress for its review.

References in text. — The reference in (b) to "subchapter II of Chapter 53 of Title 5, United States Code" is codified at 5 U.S.C. §§ 5311 to 5318.

Adjustment of salary schedule by Mayor. — See Act of June 19, 1976, D.C. Law 1-73, § 4; Act of May 18, 1978, D.C. Law 2-76, § 2.

Retroactive compensation. — See Act of August 14, 1964, 78 Stat. 431, Pub. L. 88-426, § 502; Act of September 2, 1964, 78 Stat. 800, Pub. L. 88-575, § 106; Act of November 13, 1966, 80 Stat. 1591, Pub. L. 89-810, § 104; Act of May 27, 1968, 82 Stat. 140, Pub. L. 90-320, § 7; Act of June 30, 1970, 84 Stat. 354, Pub. L. 91-297, § 109; Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410, § 116(a), (b); Act of September 3, 1974, 88 Stat. 1036, Pub. L. 93-407, § 104; Act of June 19, 1976, D.C. Law 1-73, § 3; Act of May 18, 1978, D.C. Law 2-76, § 3.

Metropolitan Police Department pay and benefit performance. — Pursuant to

§§ 2 and 3 of D.C. Law 6-145, the "Metropolitan Police Department Pay and Benefit Conformance Act of 1986," effective September 13, 1986, the Council approved changes to the compensation system for career and executive service employees not covered by collective bargaining.

Group insurance. — See Act of August 1, 1958, 72 Stat. 481, Pub. L. 85-584, § 508(b); Act of August 14, 1964, 78 Stat. 431, Pub. L. 88-426, § 501(d); Act of September 2, 1964, 78 Stat. 800, Pub. L. 88-575, § 107; Act of November 13, 1966, 80 Stat. 1591, Pub. L. 89-810, § 105; Act of May 27, 1968, 82 Stat. 140, Pub. L. 90-320, § 8; Act of June 30, 1970, 84 Stat. 354, Pub. L. 91-297, § 111; Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410, § 116(c); Act of September 3, 1974, 88 Stat. 1036, Pub. L. 93-407, § 104(c); Act of June 19, 1976, D.C. Law 1-73, § 3(c); Act of May 18, 1978, D.C. Law 2-76, § 3.

§ 4-407. Adjustments.

The rates of basic compensation of officers and members in active service on the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 shall be adjusted as follows:

(1) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of subclass (a) or (b) of salary class 1 in the salary schedule in effect on the day next preceding such effective date shall be placed in and received basic compensation in salary class 1 in the salary schedule in effect on and after such date, and each such officer or member shall be placed at the respective service step in which he was serving immediately prior to such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of subclass (a) or (b) of salary class 1 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 1 in the salary schedule in effect on and after such date, and each such officer or member shall be placed in a service step as follows:

From—	To—
Class 1, subclass (a) or (b):	Class 1:
Longevity step A	Service step 7.
Longevity step B	Service step 8.
Longevity step C	Service step 9.

(2) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of subclass (a) or (b) of salary class 2 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 2 in the salary schedule in effect on and after such date, and each shall be placed at the respective service step in which he was serving immediately prior to such date. Each officer or member receiving basic com-

pensation immediately prior to such date at one of the scheduled longevity step rates of subclass (a) or (b) of salary class 2 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 2 in the salary schedule in effect on and after such date, and each such officer or member shall be placed in a service step as follows:

From—	To—
Class 2, subclass (a) or (b):	Class 2:
Longevity step A	Service step 5.
Longevity step B	Service step 6.
Longevity step C	Service step 7.

(3) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of salary class 3, 5, 6, 7, 8, or 9 in the salary schedule in effect on the day next preceding such effective date shall receive a rate of basic compensation at the corresponding scheduled service step and salary class in the salary schedule in effect on and after such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of salary class 3, 5, 6, 7, 8, or 9 in the salary schedule in effect on the day next preceding such effective date shall receive basic compensation at the corresponding salary class in the salary schedule in effect on and after such date, and each shall be placed in a service step as follows:

From—	To—
Class 3:	Class 3:
Longevity step A	Service step 5.
Longevity step B	Service step 6.
Longevity step C	Service step 7.

From—	To—
Class 5:	Class 5:
Longevity steps A and B	Service step 5.

From—	To—
Class 6, 7, 8, or 9:	Class 6, 7, 8, or 9:
Longevity steps A and B	Service step 4.

(4) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of subclass (a), (b), or (c) of salary class 4 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 4 in the salary schedule in effect on or after such date, and each shall be placed at the respective service step in which he was serving immediately prior to such date. Each officer or member receiving basic compensation immediately prior to such date at one of the scheduled longevity step rates of subclass (a), (b), or (c) of salary class 4 in the salary schedule in effect on the day next preceding such effective date shall be placed in and receive basic compensation in salary class 4 in the salary schedule in effect on

and after such date, and each shall be placed in a service step as follows:

From—

To—

Class 4, subclass (a), (b), or (c):

Class 4:

Longevity step A Service step 5.

Longevity steps B and C Service step 6.

(5) Each officer or member receiving basic compensation immediately prior to such effective date at one of the scheduled service step rates of salary class 10 or 11 in the salary schedule in effect on the day next preceding such effective date shall receive a rate of basic compensation at the corresponding scheduled service step and salary class in the salary schedule in effect on and after such date, except that any such officer or member who immediately prior to such date was serving in service step 4 of salary class 10 or in service step 3 of salary class 11 shall be placed in and receive basic compensation in a service step as follows:

From—

To—

Class 10:

Class 10:

Service step 4 Service step 3.

From—

To—

Class 11:

Class 11:

Service step 3 Service step 2.

(Aug. 1, 1958, 72 Stat. 482, Pub. L. 85-584, title II, § 201; Aug. 29, 1972, 86 Stat. 634, Pub. L. 92-410, title I, § 103; 1973 Ed., § 4-824.)

Section references. — This section is referred to in § 1-633.3, 4-410, 4-411, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

References in text. — The effective date of

the Police and Firemen's Salary Act Amendments of 1972, referred to throughout this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

§ 4-408. Additional compensation for helicopter pilot or bomb disposal duty.

Each officer or member of the Metropolitan Police force, United States Secret Service Uniformed Division, and United States Park Police force assigned on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972: (1) To perform the duty of a helicopter pilot; or (2) to render explosive devices ineffective or to otherwise dispose of such devices shall receive, in addition to his scheduled rate of basic compensation, \$2,270 per annum so long as he remains in such assignment. The additional compensation authorized by this section shall be paid to an officer or member in the same manner as he is paid basic compensation to which he is entitled, except that when such an officer or member ceases to be in such an assignment, the loss of such additional compensation shall not constitute an adverse action for the purposes of § 7511 et seq. of Title 5 of the United States Code. No officer or member who receives the additional compensation authorized by this section may receive additional compensation under § 4-411. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title II, § 202; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88-575, title I, § 103; Aug. 29, 1972, 86 Stat. 636, Pub. L. 92-410, title I, § 104; 1973 Ed., § 4-825; Sept. 3, 1974, 88 Stat. 1036, Pub. L. 93-407, title I, § 101(a)(2), (3); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

References in text. — The effective date of the Police and Firemen's Salary Act Amend-

ments of 1972, referred to in the first sentence of this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

§ 4-409. Classification of aide to Fire Marshal.

The aide to the Fire Marshal shall be included as a fire inspector in salary class 2. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title II, § 203; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882; § 3(a); Aug. 29, 1972, 86 Stat. 636, Pub. L. 92-410, title I, § 105(a); 1973 Ed., § 4-826.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

§ 4-410. Minimum rate for original appointments; rates for reappointments.

(a) Except as provided in subsection (b) of this section, all original appointments of police and fire privates shall be made at the minimum rate set forth in the schedule in § 4-406, and the 1st year of service shall be probationary.

(b) Any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Secret Service Uniformed Division, or the United States Park Police force who separates from that force, Department, or Division, and who is subsequently reappointed to such force, Department, or Division within 3 years after the date of such separation shall receive any scheduled rate of basic compensation provided in salary class 1 of the salary schedule in § 4-406(a) which does not exceed the scheduled rate of basic compensation being paid at the time of such reappointment for the class and service step he had attained at the time of his separation. For purposes of this subsection, no additional compensation authorized by §§ 4-406 to 4-420 shall be used in determining service step placement. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 301; 1973 Ed., § 4-827; Sept. 3, 1974, 88 Stat. 1036, Pub. L. 93-407, title I, § 101(a)(4); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 4-411, 4-412, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

§ 4-411. Technicians' positions.

(a) The Mayor of the District of Columbia, in the case of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Treasury, in the case of the United States Secret Service Uniformed Division, and the Secretary of the Interior, in the case of the United States Park Police force, are authorized to establish and determine, from time to time, the positions in salary classes 1, 2, and 4 to be included as technicians' positions.

(b) Each officer or member: (1) Who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972: (A) Was in a position assigned to subclass (b) of salary class 1 or 2 or subclass (c) of salary class 4; or (B) was in salary class 4 and was performing the duty of a dog handler; or (2) whose position is determined under subsection (a) of this section to be included in salary class 1, 2, or 4 on or after such date as a technician's position shall on or after such date receive, in addition to his scheduled rate of basic compensation, \$810 per annum. An officer or member described in clause (1)(A) or (2) of this subsection shall receive the additional compensation authorized by this subsection until his position is determined under subsection (a) of this section not to be included in salary class 1, 2, or 4, as a technician's position or until he no longer occupies such position, whichever occurs first. An officer or member described in clause (1) (B) of this subsection shall receive such compensation until the position of dog handler is determined under subsection (a) of this section not to be included in salary class 4 as a technician's position or until he no longer performs the duty of dog handler, whichever first occurs. If the position of dog handler is included under subsection (a) of this section as a technician's position, an officer or member performing the duty of a dog handler may not receive both the additional compensation authorized for an officer or member occupying a technician's position and the additional compensation authorized for officers and members performing the duty of a dog handler.

(c) Each officer or member who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 was assigned as a detective sergeant in subclass (b) of salary class 4 shall, on or after such date, receive, in addition to his scheduled rate of basic compensation, \$595 per annum so long as he remains in such assignment. Each officer or member who is promoted after such date to the rank of detective sergeant shall receive, in addition to his scheduled rate of basic compensation, \$595 per annum so long as he remains in such assignment.

(d) The additional compensation authorized by subsections (b) and (c) of this section shall be paid to an officer or member in the same manner as he is paid the basic compensation to which he is entitled.

(e) Whenever any officer or member receiving additional compensation authorized by subsection (b) or (c) of this section is no longer entitled to receive such additional compensation, without a change in salary class, he shall receive, irrespective of any subsequent salary schedule or service step adjustment authorized by §§ 4-406 to 4-420, basic compensation equal to the sum of his existing scheduled rate of basic compensation and the amount of such additional compensation until his scheduled rate of basic compensation equals or exceeds such sum.

(f) The loss of the additional compensation authorized by subsection (b) or (c) of this section shall not constitute an adverse action for the purposes of § 7511 et seq. of Title 5 of the United States Code. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 302; Aug. 29, 1972, 86 Stat. 636, Pub. L. 92-410, title I, § 106; 1973 Ed., § 4-828; Sept. 3, 1974, 88 Stat. 1037, Pub. L. 93-407, title I, § 101(a)(5)-(7); Jan. 3, 1975, 88 Stat. 2174, Pub. L. 93-635, § 2; June

19, 1976, D.C. Law 1-73, § 2(3), 23 DCR 2807; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 4-408, 4-410, 4-412, 4-413, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

Legislative history of Law 1-73. — See note to § 4-406.

References in text. — The effective date of the Police and Firemen's Salary Act Amendments of 1972, referred to in subsections (b) and (c) of this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Govern-

mental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-412. Service step adjustments.

(a) Each officer and member, if he has a current performance rating of "satisfactory" or better, shall have his service step adjusted in the following manner:

(1) Each officer and member in service step 1, 2, or 3 of salary class 1 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 52 calendar weeks of active service in his service step;

(2) Each officer and member in service step 4 or 5 of salary class 1 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 104 calendar weeks of active service in his service step;

(3) Each officer and member in service step 6, 7, or 8 of salary class 1 shall be advanced in compensation successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 156 calendar weeks of active service in his service step; and

(4) Each officer and member in salary classes 2 through 11 who has not attained the maximum service step rate of compensation for the rank or title in which he is placed shall be advanced in compensation successively to the next higher service step rate for such rank or title at the beginning of the 1st pay period immediately subsequent to the completion of 104 calendar weeks of active service in his service step, except that in the case of an officer or member in service step 4, 5, or 6 of salary class 2 or 3, service step 4 or 5 of salary class 4, and service step 4 of salary class 5, such officer or member shall be advanced successively to the next higher service step at the beginning of the 1st pay period immediately subsequent to the completion of 156 calendar weeks of active service in his service step.

(b) As used in §§ 4-410 to 4-414, the term "calendar week of active service" includes all periods of leave with pay, and periods of nonpay status which do

not cumulatively equal 1 basic workweek. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 303; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88-575, title I, § 104; Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89-810, title I, § 103; June 30, 1970, 84 Stat. 356, Pub. L. 91-297, title I, § 104; Aug. 29, 1972, 86 Stat. 637, Pub. L. 92-410, title I, § 107; 1973 Ed., § 4-829.)

Cross references. — As to annual increase, withholding for inefficiency, discharge for inefficiency, and extra compensation for demonstrated ability, see § 4-401.

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

§ 4-413. Promotion or transfer.

(a) Except as otherwise provided in subsection (b) of this section, any officer or member who is promoted or transferred to a higher salary class shall receive basic compensation at the lowest scheduled rate of such higher salary class which exceeds his existing scheduled rate of basic compensation by not less than 1 step increase of the next higher step of the salary class from which he is promoted or transferred.

(b) Any officer or member receiving additional compensation as provided in § 4-411 who is promoted or transferred to a higher salary class shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds his existing scheduled rate of basic compensation by at least the sum of 1 step increase of the next higher step of the salary class from which he is promoted or transferred and the amount of such additional compensation. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, title III, § 304; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 3(c); June 30, 1970, 84 Stat. 356, Pub. L. 91-297, title I, § 105; Aug. 29, 1972, 86 Stat. 638, Pub. L. 92-410, title I, § 108; 1973 Ed., § 4-830.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-412, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

§ 4-414. Demotion.

Whenever any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Secret Service Uniformed Division, or the United States Park Police force is changed or demoted from any class to a lower class, the Mayor of the District of Columbia, or the Secretary of the Treasury, or the Secretary of the Interior, as the case may be, may, in his discretion, in changing or demoting such officer or member, fix his rate of compensation at any rate provided for the class to which he is changed or demoted which does not exceed his existing rate of compensation, except that if his existing rate falls between 2 step rates provided in such lower class, he may receive the higher of such rates. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584, title III, § 305; Aug. 29, 1972, 86 Stat. 638, Pub. L. 92-410, title I, § 109; 1973 Ed., § 4-831; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-412, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-415. Service longevity.

(a)(1) In recognition of long and faithful service, each officer and member in the active service on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 shall receive per annum, in addition to the rate of basic compensation prescribed in the salary schedule contained in § 4-406, an amount computed in accordance with the following table:

If an officer or member has completed at least:

Fifteen years of continuous service.

Twenty years of continuous service.

Twenty-five years of continuous service.

Thirty years of continuous service.

He shall receive per annum an amount, fixed to the nearest dollar, equal to:

Five per centum of the rate of basic compensation prescribed for service step 1 of the salary class of such salary schedule which he occupies.

Ten per centum of such compensation.

Fifteen per centum of such compensation.

Twenty per centum of such compensation.

(2) For purposes of paragraph (1) of this subsection, continuous service as an officer or member includes only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service:

(A) Determined not to have been satisfactory service;

(B) Rendered before appointment as an officer or member; or

(C) Rendered after resignation as an officer or member.

(3) Each officer and member shall receive additional compensation in accordance with paragraph (1) of this subsection only as long as he remains in the active service. Such compensation shall be paid in the same manner as the basic compensation to which such officer or member is entitled, except that it shall not be subject to deduction and withholding for retirement and insurance, and shall not be considered as salary for the purpose of computing annuities pursuant to §§ 4-607 to 4-630 and for the purpose of computing insurance coverage under the provisions of Chapter 87 of Title 5, United States Code.

(b) Notwithstanding any other provision of this or any other law, individuals retired from active service prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, and who are

entitled to receive a pension relief allowance or retirement compensation under §§ 4-607 to 4-630, shall not be entitled to receive an increase in their pension relief allowance or retirement compensation by reason of the enactment of this section.

(c) Notwithstanding any other provision of this or any other law, each Deputy Chief of the Metropolitan Police force and of the Fire Department of the District of Columbia shall, upon completion of 30 years of continuous service on the police force or Fire Department, as the case may be, be placed in, and receive basic compensation at, the highest service step in the salary class to which his position is assigned in the salary schedule contained in § 4-406. For purposes of this subsection, in computing a Deputy Chief's continuous service on the police force or Fire Department, there shall be included only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service:

(1) Determined not to have been satisfactory service;

(2) Rendered before appointment as an officer or member; or

(3) Rendered after resignation as an officer or member. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85-584; title IV, § 401; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87-882, § 3(d); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88-575, title I, § 105; May 27, 1968, 82 Stat. 144, Pub. L. 90-320, § 3; June 30, 1970, 84 Stat. 356, Pub. L. 91-297, title I, § 106; Aug. 29, 1972, 86 Stat. 638, Pub. L. 92-410, title I, § 110; 1973 Ed., § 4-832; Sept. 3, 1974, 88 Stat. 1037, Pub. L. 93-407, title I, § 101(a)(8), (9).)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-418, 4-419, 4-420, and 4-1104.

References in text. — The effective date of the Police and Firemen's Salary Act Amendments of 1972, referred to in subsections (a)(1)

and (b) of this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

"Chapter 87 of Title 5, United States Code", referred to in subsection (a)(3), is codified at 5 U.S.C. § 8701 et seq.

§ 4-416. Basic compensation of officers and members of United States Park Police and United States Secret Service Uniformed Division.

(a) Except as provided in subsections (b) and (c) of this section, the rates of basic compensation of officers and members of the United States Park Police and the United States Secret Service Uniformed Division shall be the same as the rates of compensation, including longevity increases, provided in §§ 4-406 to 4-420, for officers and members of the Metropolitan Police force in corresponding or similar classes.

(b)(1) Effective at the beginning at the 1st applicable pay period commencing on or after the 1st day of the month in which an adjustment takes effect under § 5305 of Title 5, United States Code, in the rates of pay under General Schedule, the annual rate of basic compensation of officers and members of the United States Park Police force shall be adjusted by the Secretary of the Interior, and the annual rate of basic compensation of officers and members of

the United States Secret Service Uniformed Division may be adjusted by the Secretary of the Treasury, by an amount (rounded to the next highest multiple of \$5) equal to the percentage of such annual rate of pay which corresponds to the overall percentage (as set forth in the applicable report transmitted to the Congress under such § 5305) of the adjustment made in the rates of pay under the General Schedule.

(2) No adjustment in the annual rate of basic compensation of such officers and members may be made except in accordance with paragraph (1) of this subsection.

(c) Any reference in any law to the salary schedule in § 4-406 with respect to officers and members of the United States Park Police force or to officers and members of the United States Secret Service Uniformed Division shall be considered to be a reference to such schedule as adjusted in accordance with subsection (b) of this section. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 501; Aug. 29, 1972, 86 Stat. 639, Pub. L. 92-410, title I, § 111; 1973 Ed., § 4-833; Oct. 17, 1976, 90 Stat. 2493, Pub. L. 94-533, § 2; Oct. 7, 1980, 94 Stat. 1562, Pub. L. 96-396.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-417, 4-418, 4-419, 4-420, and 4-1104.

Evidence sufficient to raise issue of disability. — Evidence was sufficient to raise question of whether police officer seeking disability retirement was disabled for "useful and

efficient service" where it was shown that the duties the police officer performed on light duty only required about 1½ hours per week. *Martin v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 532 A.2d 102 (1987).

§ 4-417. Sections 4-406 to 4-420 not construed to decrease compensation; exception as to vacancy.

Nothing contained in §§ 4-406 to 4-420 shall be construed to decrease the existing rate of compensation of any present officer or member, but when his position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay applicable to such position. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 503; 1973 Ed., § 4-834.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-418, 4-419, 4-420, and 4-1104.

§ 4-418. Council authorized to promulgate regulations.

The Council of the District of Columbia is hereby authorized to promulgate such regulations as it may deem necessary to carry out the intent and purposes of §§ 4-406 to 4-420. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 504; 1973 Ed., § 4-835.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-419, 4-420, and 4-1104.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section

402(114) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-419. Retroactive salary.

(a) Retroactive salary shall be paid by reason of §§ 4-406 to 4-420 only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on August 1, 1958, except that retroactive salary shall be paid:

(1) To an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the United States Secret Service Uniformed Division, who retired during the period beginning on the 1st day of the 1st pay period which began after January 1, 1958, and ending on August 1, 1958, for services rendered during such period; and

(2) In accordance with the provisions of §§ 5581 to 5583 of Title 5, United States Code, for services rendered during the period beginning on the 1st day of the 1st pay period which began after January 1, 1958, and ending on August 1, 1958, by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the federal government or the municipal government of the District of Columbia. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85-584, title V, § 505; 1973 Ed., § 4-836; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-418, 4-420, and 4-1104.

§ 4-420. Delegation of powers and functions.

The Mayor of the District of Columbia, the Secretary of the Treasury, and the Secretary of the Interior are hereby authorized to delegate, from time to time, to their designated agent or agents, any power or function vested in them by §§ 4-406 to 4-420, except those powers and functions vested in them by §§ 4-414 and 4-418. (Aug. 1, 1958, 72 Stat. 486, Pub. L. 85-584, title V, § 506; 1973 Ed., § 4-837.)

Section references. — This section is referred to in §§ 4-410, 4-411, 4-416, 4-417, 4-418, 4-419, and 4-1104.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 5. POLICE AND FIREFIGHTERS MEDICAL CARE RECOVERY.

Sec.

4-501. Definitions.

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by Mayor.

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Sec.

4-507. Effect of chapter on other rights of recovery.

4-508. Injuries or diseases received or contracted prior to enactment of chapter.

4-509. Appropriations authorized.

§ 4-501. Definitions.

As used in this chapter:

(1) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

(2) The term "person" means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common-law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent. (1973 Ed., § 4-1001; Aug. 17, 1978, D.C. Law 2-100, § 2, 25 DCR 288.)

Cross references. — As to right of District to reimbursement for health care assistance, see § 3-509.

Legislative history of Law 2-100. — Law 2-100, the "District of Columbia Medical Care Recovery Act of 1978," was introduced in Council and assigned Bill No. 2-98, which was

referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978, and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-208 and transmitted to both Houses of Congress for its review.

§ 4-502. Right of District to recover.

Whenever the District of Columbia is authorized or required by law to: (1) Furnish or pay the expenses for hospital, medical, surgical, dental care and treatment (including prostheses and medical appliances) or the funeral expenses of an officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia (hereinafter, "policeman or fireman"); or (2) extend leave of absence with pay to a policeman or fireman who is injured or suffers a disease under circumstances creating a tort liability upon a 3rd person to pay damages therefor, whether or not received or contracted in the performance of duty, the District of Columbia shall have a right to recover from said 3rd person the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages paid or to be paid during the leave of absence resulting therefrom, and shall as to such right be subrogated to any right or claim which the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors has or have against such 3rd person to the extent of the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages based upon an authorized leave of absence

paid or to be paid to such policeman or fireman. The Mayor may also require the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the 3rd person to the District of Columbia to the extent of the District's right or claim. (1973 Ed., § 4-1002; Aug. 17, 1978, D.C. Law 2-100, § 3, 25 DCR 288.)

Section references. — This section is referred to in §§ 4-504 and 4-506.

Legislative history of Law 2-100. — See note to § 4-501.

§ 4-503. Enforcement of right.

(a) To enforce such right, the District of Columbia may:

(1) Intervene or join in any action or proceeding brought by the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, against the 3rd person who is or may be liable in damages for the injury or disease; or

(2) If such action or proceeding is not commenced within 6 months after the 1st day in which care and treatment is furnished by the District of Columbia in connection with the injury or disease involved, institute and prosecute legal proceedings in a District of Columbia, state or federal court, either alone (in its name or in the name of the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors against the 3rd person who is liable for the injury or disease.

(b) Any employee of the District of Columbia who is required to appear as a party or witness in the prosecution of said action or proceeding is, when directed to participate in the preparation for trial or the trial thereof and while so engaged, in an active duty status. (1973 Ed., § 4-1003; Aug. 17, 1978, D.C. Law 2-100, § 4, 25 DCR 288.)

Section references. — This section is referred to in § 4-506.

Legislative history of Law 2-100. — See note to § 4-501.

§ 4-504. Lien.

(a) The District of Columbia shall have a lien, to the amount of the reasonable value of the care and treatment, funeral expenses, and wage payments described in § 4-502, upon any recovery of sum received or collected or to be collected by an injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors in a claim or action asserted or maintained by such policeman or fireman or his personal representative against a liable 3rd person for damages.

(b)(1) No such lien described above shall be effective, however:

(A) Unless, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease, the District of Columbia shall have filed in the Office of the Recorder of Deeds of the District of Columbia, in a

docket provided for such liens, a written notice containing the name and address of the injured or diseased policeman or fireman, the date and approximate place of the accident or incident giving rise thereto and the name of the person alleged to be liable to the policeman or fireman for the injuries or disease received; or

(B) Unless the District of Columbia shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person alleged to be liable to the policeman or fireman for the injuries or disease received, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease.

(2) Where the name of an insurance carrier for the 3rd party tort-feasor is ascertained, the District of Columbia shall also mail a copy of such notice to such insurance carrier. Notice of the filing of the lien shall also be given to the injured or diseased policeman or fireman, or to his attorney or personal representative.

(c) Any person, including an insurance carrier, who, after the mailing of such notice, shall make any payment to such policeman or fireman or to his attorney or personal representative as compensation for the injury sustained or disease contracted without paying to the District of Columbia the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of 1 year from the date of payment to such policeman or fireman, his attorney, or personal representative, as aforesaid, be and remain liable to said District of Columbia for the amount which the District was entitled to receive under its lien, and the District of Columbia may, within such period, enforce its lien by an action against the person making any such payment.

(d) When a policeman or fireman, or his attorney or personal representative, receives, as a result of an action or proceeding brought by the policeman or fireman, or on his behalf or a result of a settlement made by him or on his behalf, any moneys or other property in satisfaction of the liability of a 3rd person for the injury sustained or disease contracted, such policeman or fireman, or his attorney or personal representative, as the case may be, shall ascertain and pay to the District of Columbia the amount of its lien or so much thereof as can be realized out of any such recovery or settlement. Notwithstanding any other provision of law, whenever a policeman or fireman, or his attorney or personal representative, receives any payment as described in the preceding sentence and fails to pay to the District of Columbia the amount of its lien, the District of Columbia is authorized to take appropriate action to recover from such policeman or fireman or his attorney or personal representative the amount of its lien, including, but not limited to, the right to counterclaim, setoff, or attach moneys or other property otherwise due and payable from the District of Columbia to said policeman or fireman, his guardian, personal representative, estate, dependents or survivors. (1973 Ed., § 4-1004; Aug. 17, 1978, D.C. Law 2-100, § 5, 25 DCR 288.)

Section references. — This section is referred to in § 4-506.

Legislative history of Law 2-100. — See note to § 4-501.

§ 4-505. Promulgation of rules and regulations by Mayor.

The Mayor is authorized to promulgate rules and regulations to carry out the purposes of this chapter, including, but not limited to, regulations:

(1) With respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished, or paid or to be paid; and

(2) To provide procedures for distributing the proceeds from recoveries and settlements obtained by either the injured or diseased policeman or fireman or the District of Columbia; provided, that in any event said policeman or fireman, or his guardian, personal representative, estate, dependents, or survivors shall have the right to retain not less than one-fifth of the net amount of any money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the lien of the District of Columbia. (1973 Ed., § 4-1005; Aug. 17, 1978, D.C. Law 2-100, § 6, 25 DCR 288.)

Section references. — This section is referred to in § 4-506.

Legislative history of Law 2-100. — See note to § 4-501.

Delegation of authority pursuant to Law 2-100. — See Mayor's Order 86-63, April 22, 1986.

§ 4-506. Compromise, release or waiver of claim.

To the extent prescribed by regulations under § 4-505, the Mayor may:

(1) Compromise or settle and execute a release of any claim which the District of Columbia has by virtue of the rights established by § 4-502, § 4-503, or § 4-504; or

(2) For the convenience of the District of Columbia, or if the Mayor determines that collection would result in undue hardship upon the policeman or fireman who suffered the injury or disease resulting in care and treatment described in § 4-502, or upon his dependents or survivors, waive any such claim in whole or in part. (1973 Ed., § 4-1006; Aug. 17, 1978, D.C. Law 2-100, § 7, 25 DCR 288.)

Legislative history of Law 2-100. — See note to § 4-501.

§ 4-507. Effect of chapter on other rights of recovery.

No action taken by the District of Columbia in connection with the rights afforded under this chapter shall operate to deny to the injured or diseased policeman or fireman recovery for any damages or portion thereof not covered by this chapter. (1973 Ed., § 4-1007; Aug. 17, 1978, D.C. Law 2-100, § 8, 25 DCR 288.)

Legislative history of Law 2-100. — See note to § 4-501.

§ 4-508. Injuries or diseases received or contracted prior to enactment of chapter.

Nothing in this chapter shall be deemed to apply to any hospital, medical, surgical, or dental care or treatment or wage payments based upon an authorized leave of absence which a policeman or fireman is receiving or is entitled to receive from the District of Columbia for an injury received or disease contracted prior to enactment of this chapter. (1973 Ed., § 4-1008; Aug. 17, 1978, D.C. Law 2-100, § 9, 25 DCR 288.)

Legislative history of Law 2-100. — See note to § 4-501.

§ 4-509. Appropriations authorized.

Appropriations to carry out the purposes of this chapter, including funds for the advancement of costs and expenses for the enforcement of recoveries, are hereby authorized. (1973 Ed., § 4-1009; Aug. 17, 1978, D.C. Law 2-100, § 10, 25 DCR 288.)

Legislative history of Law 2-100. — See note to § 4-501.

CHAPTER 6. POLICE AND FIREFIGHTERS RETIREMENT AND DISABILITY.

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| <p>Sec.</p> <p>4-601. Payment and deposit of moneys.</p> <p>4-602. Credit for active service in military or naval forces.</p> <p>4-603. Mayor to determine amount of pension relief.</p> <p>4-604. Equalization of pensions of widows and orphans granted prior to October 1, 1949.</p> <p>4-605. Pension relief allowance or retirement compensation increase.</p> <p>4-606. Computation of pension of certain retired officers.</p> <p>4-607. Definitions.</p> <p>4-608. Application of amendments to §§ 4-607 and 4-622.</p> <p>4-609. United States Secret Service Division; transfer of civil service funds; credit for prior service with other police forces.</p> <p>4-610. Creditable service.</p> <p>4-611. Application of amendment to § 4-610.</p> <p>4-612. Deductions, deposits, and refunds; order of persons entitled to refunds for deductions.</p> <p>4-613. Payment of medical expenses — Active members.</p> <p>4-614. Same — Total disability retirees.</p> <p>4-615. Retirement for disability — Not incurred in performance of duty.</p> <p>4-616. Same — Incurred or aggravated in performance of duty.</p> <p>4-617. Application of amendment to § 4-616.</p> <p>4-618. Optional retirement.</p> | <p>Sec.</p> <p>4-618.1. Retired police officer redeployment.</p> <p>4-619. Involuntary separation from service.</p> <p>4-620. Recovery from disability; restoration to earning capacity; suspension or reduction of annuity.</p> <p>4-621. Application of amendment to § 4-620.</p> <p>4-622. Survivor benefits and annuities.</p> <p>4-623. Deferred annuities; refund of deductions; redeposits and interest.</p> <p>4-624. Cost-of-living adjustments of annuities.</p> <p>4-625. Application of § 4-624.</p> <p>4-626. Funeral expenses.</p> <p>4-627. Duties of Mayor; proceedings related thereto; disability retiree to report employment and undergo medical examination; overpayments.</p> <p>4-628. Police and Firemen's Retirement and Relief Board.</p> <p>4-629. Accrue ment and payment of annuities; persons who may accept payment; waiver; reduction.</p> <p>4-630. Delegation of functions by Mayor; promulgation of rules and regulations by Mayor.</p> <p>4-631. Existing relief and rights preserved.</p> <p>4-632. Appropriations authorized.</p> <p>4-633. Eligibility for benefits under federal law.</p> <p>4-634. Rights and relief of widows and children of deceased former members.</p> |
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§ 4-601. Payment and deposit of moneys.

Commencing with July 1, 1935, and thereafter, all moneys on June 14, 1935, required to be deposited to the credit of the Policemen and Firemen's Relief Fund, District of Columbia, under § 4-612(a), shall be paid to the Collector of Taxes of the District of Columbia and deposited in the Treasury to the credit of the revenues of said District, except that all moneys required to be deposited with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be paid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712. (June 14, 1935, 49 Stat. 358, ch. 241, § 1; 1973 Ed., § 4-502; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 122(b)(2).)

Section references. — This section is referred to in §§ 1-633.3 and 1-712.

Third-party actions excluded. — Since the Police and Firefighters Disability Act is

the exclusive remedy against the District of Columbia for uniformed personnel, the Act excludes third-party actions against the District of Columbia in cases arising out of the same set of

facts that gave rise to the underlying claim under the Disability Act. *Lewis v. District of Columbia*, App. D.C., 499 A.2d 911 (1985).

Cited in *Ray v. District of Columbia*, App.

D.C., 535 A.2d 868 (1987); *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 626 A.2d 904 (1993).

§ 4-602. Credit for active service in military or naval forces.

In determining eligibility for the amount of benefits from the Policemen and Firemen's Relief Fund, District of Columbia, or the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712), each member of the Metropolitan Police Department of the District of Columbia, the United States Park Police force, the United States Secret Service Uniformed Division, the Fire Department of the District of Columbia, and each member of the United States Secret Service who has actively performed duties other than clerical for 10 years or more directly related to the protection of the President, who shall have left active employment in any such Department, force, or Service to perform active service in the military or naval forces of the United States, shall be credited with all periods of honorable active military or naval service performed on or after September 16, 1940, and prior to the termination of the war as declared by Presidential proclamation or concurrent resolution of the Congress. (July 21, 1947, 61 Stat. 398, ch. 272; 1973 Ed., § 4-504a; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 122(b)(3).)

Cross references. — As to creditable service for purpose of retirement and disability, see § 4-610.

Coverage Under Federal Employees' Retirement Act. — Officers and members of the United States Park Police, United States Secret Service Uniformed Division, and United

States Secret Service Division hired on or after January 1, 1984, are covered by the Federal Employees' Retirement System Act, not the District of Columbia Retirement System, unless exempt from coverage of such Act. See 5 U.S.C. §§ 8401(17)(B) and 8402.

§ 4-603. Mayor to determine amount of pension relief.

The Mayor of the District of Columbia is hereby empowered to determine and fix the amount of the pension relief allowance heretofore and hereafter granted to any person under and in accordance with the provisions of §§ 4-607 to 4-630. (July 1, 1930, 46 Stat. 841, ch. 783, § 6; 1973 Ed., § 4-505.)

Cross references. — As to the automatic equalization of pensions, see § 4-605.

Section references. — This section is referred to in § 4-605.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Constitutionality of Mayor's authority. — The Mayor is empowered to redetermine and fix the amount of the pension relief allow-

ance of policemen and firemen already in service, as well as those thereafter, and such a redetermination is not unconstitutional.

Dougherty v. United States ex rel. Browning, 45 F.2d 926 (D.C. Cir. 1931).

§ 4-604. Equalization of pensions of widows and orphans granted prior to October 1, 1949.

All widows and children of deceased members of the Police Department or of the Fire Department of the District of Columbia receiving relief under the provisions of §§ 4-607 to 4-630 shall be entitled to receive relief to the same extent and in the same manner as is provided by § 4-622; provided, that no relief shall be increased or allowed under the authority of this section for any period prior to October 1, 1949; provided further, that any child or children who had attained the age of 16 years and whose benefits were terminated shall be entitled to receive relief as provided by § 4-622 until the attainment of 18 years of age. (Aug. 4, 1949, 63 Stat. 566, ch. 394, § 3; 1973 Ed., § 4-507a.)

§ 4-605. Pension relief allowance or retirement compensation increase.

(a) Notwithstanding § 4-603, each individual heretofore or hereafter retired from active service and entitled to receive a pension relief allowance or retirement compensation under the provisions of §§ 4-607 to 4-630 shall be entitled to receive, without making application therefor, with respect to each increase in salary granted by this act, or hereafter granted by law to which such individual would be entitled if he were in active service, an increase in his pension relief allowance or retirement compensation. Except as otherwise provided in this section, such increase shall be in an amount which bears the same ratio to such increase in salary as the amount of each such individual's pension relief allowance or retirement compensation in effect on the day next preceding such salary increase bore to the salary to which he would have been entitled had he been in active service on the day next preceding such salary increase.

(b) The increase prescribed by subsection (a) of this section in the pension relief allowance or retirement compensation received by an individual retired from active service before the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 under §§ 4-607 to 4-630 as a result of the increase in salary provided by the District of Columbia Police and Firemen's Salary Act Amendments of 1972 shall not be less than 17% of such allowance or compensation.

(c) Each individual retired from active service and entitled to receive a pension relief allowance or retirement compensation under §§ 4-607 to 4-630 shall be entitled to receive, without making application therefor, with respect to each increase in salary, granted by any law which takes effect after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, to which he would be entitled if he were in active

service, an increase in his pension relief allowance or retirement compensation computed as follows: His pension relief allowance or retirement compensation shall be increased by an amount equal to the product of such allowance or compensation and the per centum increase made by such law in the scheduled rate of compensation to which he would be entitled if he were in active service on the effective date of such increase in salary.

(d) Each increase in pension relief allowance or retirement compensation made under this section because of an increase in salary shall take effect as of the 1st day of the 1st month following the effective date of such increase in salary.

(e) This section shall not apply with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia who retire after the effective date of this subsection (June 20, 1953, 67 Stat. 75, ch. 146, title III, § 301; Aug. 29, 1972, 86 Stat. 640, Pub. L. 92-410, title I, § 114; 1973 Ed., § 4-518; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 209(c).)

Cross references. — As to determination of amount of pension relief by Mayor, see § 4-603.

References in text. — "This act," referred to in the first sentence of subsection (a) of this section, means the Act of June 20, 1953, 67 Stat. 75, ch. 146.

The effective date of the Police and Firemen's Salary Act Amendments of 1972, referred to throughout this section, is prescribed by § 118 of the Act of August 29, 1972, 86 Stat. 634, Pub. L. 92-410.

Implementation of automatic equalization provisions of subsection (c). — Section 9 of D.C. Law 4-78 provided that for the purposes of implementing the automatic equalization provisions of subsection (c) of this section, the "early reporting time stipends" paid to active members of the Metropolitan Police De-

partment pursuant to the negotiated agreement between the International Brotherhood of Police Officers and the District of Columbia government, signed by the Mayor on July 15, 1981, and submitted to the Council on July 29, 1981, shall be considered to be a salary increase within the scope of the equalization clause, and shall be included for the purpose of computing increases in retirement benefits pursuant to the equalization clause for those retired members who would have received such early reporting time stipend payments had they been on active service when such payments are made.

Cited in *Abell v. Spencer*, 225 F.2d 568 (D.C. Cir. 1955); *Poyner v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 456 A.2d 1249 (1983).

§ 4-606. Computation of pension of certain retired officers.

In computing the pension relief allowance or retirement compensation of any such individual retired before July 1, 1953, as Major and Superintendent of Police, Assistant Superintendent of Police, Chief Engineer of the Fire Department, Deputy Chief Engineer of the Fire Department, or Battalion Chief Engineer of the Fire Department of the District of Columbia, such person shall, for the purposes of this act, be deemed to have retired as Chief of Police, Deputy Chief of Police, Fire Chief, Deputy Fire Chief, or Battalion Fire Chief, respectively. (June 20, 1953, 67 Stat. 75, ch. 143, title III, § 302; 1973 Ed., § 4-519.)

References in text. — "This act," referred to in this section, means the Act of June 20, 1953, 67 Stat. 75, ch. 143.

§ 4-607. Definitions.

Wherever used in §§ 4-607 to 4-630:

(1) The term "member" means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force, of the United States Secret Service Uniformed Division, and any officer or member of the United States Secret Service Division to whom §§ 4-607 to 4-630 shall apply, but does not include an officer or member of the United States Park Police force, of the United States Secret Service Uniformed Division, or of the United States Secret Service Division, whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, and who is not excluded from coverage under chapter 84 of title 5, United States Code, by operation of § 8402 of such title.

(2) The terms "disabled" and "disability" mean disabled for useful and efficient service in the grade or class of position last occupied by the member by reason of disease or injury, not due to vicious habits or intemperance as determined by the Board of Police and Fire Surgeons, or willful misconduct on his part as determined by the Mayor.

(3) The term "widow" means the surviving wife of a member or former member if:

(A) She was married to such member or former member:

(i) While he was a member; or

(ii) For at least 1 year immediately preceding his death; or

(B) She is the mother of issue by such marriage.

(4) The term "widower" means the surviving husband of a member or former member if, in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the surviving husband of a member or former member who was a member or officer of the Metropolitan Police force or the Fire Department of the District of Columbia if:

(A) He was married to such member or former member:

(i) While she was a member; or

(ii) For at least 1 year immediately preceding her death; or

(B) He is the father of issue by such marriage.

(5)(A) The term "child" means an unmarried child, including:

(i) An adopted child; and

(ii) A stepchild or recognized natural child who lives with the member in a regular parent-child relationship, under the age of 18 years; or

(iii) Such unmarried child regardless of age who, because of physical or mental disability incurred before the age of 18, is incapable of self-support.

(B) The term "student child" means an unmarried child who is a student between the ages of 18 and 22 years, inclusive, and who is regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

(6) The term "basic salary" means regular salary established by law or regulation, including any differential for special occupational assignment, but shall not include overtime, holiday, or military pay.

(7) The term "annuitant" means any former member who, on the basis of his service, has met all requirements of §§ 4-607 to 4-630 for title to annuity and has filed claim therefor.

(8) The term "survivor" means a person who is entitled to annuity under §§ 4-607 to 4-630 based on the service of a deceased member or of a deceased annuitant.

(9) The term "survivor annuitant" means a survivor who has filed claim for annuity.

(10) The term "police or fire service" means all honorable service in the Metropolitan Police Department, United States Secret Service Uniformed Division, Fire Department of the District of Columbia, the United States Park Police force, and the United States Secret Service Division coming under the provisions of this act.

(11) The term "military service" means honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, but shall not include service in the National Guard except when ordered to active duty in the service of the United States.

(12) The term "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(13) The term "service" means employment which is creditable under § 4-610.

(14) The term "government" means the executive, judicial, and legislative branches of the United States government, including government owned or controlled corporations and Gallaudet College, and the municipal government of the District of Columbia.

(15) The term "government service" means honorable active service in the executive, judicial, or legislative branches of the United States government, including government owned or controlled corporations, and Gallaudet College, and the municipal government of the District of Columbia, and for which retirement deductions, other than social security deductions, were made.

(16) The term "department" means any part of the executive branch of the United States government, or any part of the government of the District of Columbia whose members come under §§ 4-607 to 4-630.

(17) The term "average pay" means the highest annual rate resulting from averaging the member's rates of basic salary in effect over any 36 consecutive months of police or fire service in the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, or over any 12 consecutive months of police or fire service in the case of any other member, with each rate weighted by the time it was in effect, except that if the member retires under § 4-616 and if on the date of his retirement under the section he has not completed 12 consecutive months or 36 consecutive months, as the case may

be, of police or fire service, such term means his basic salary at the time of his retirement.

(18) The term "adjusted average pay" means the average pay of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia increased by the per centum increase (adjusted to the nearest one tenth of 1%) in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, between the month in which such member retires and the month immediately prior to the month in which such member dies. (Sept. 1, 1916, ch. 433, § 12(a); Aug. 21, 1957, 71 Stat. 391, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1136, Pub. L. 91-509, § 1(1), (2); Dec. 7, 1970, 84 Stat. 1392, Pub. L. 91-532, § 1(a); Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(1); 1973 Ed., § 4-521; Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(a), (d)(1); Oct. 1, 1976, D.C. Law 1-87, § 8(a), 23 DCR 2544; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 96-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 201, 206(a)(2); Dec. 21, 1987, 101 Stat. 1745, Pub. L. 100-238, § 103(d); Feb. 5, 1994, D.C. Law 10-68, § 13, 40 DCR 6311.)

Cross references. — As to United States Secret Service Uniformed Division, see 3 U.S.C. §§ 202 to 209. As to definition of "retirement program," see § 1-702. As to unclaimed property held by Property Clerk, see § 4-160. As to United States Park Police, see § 4-201 et seq. As to salary of police and firemen, see § 4-406 et seq. As to unemployment compensation, see § 46-101 et seq.

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-608, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-625, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, 6-1403, 9-118 and 9-119.

Effect of amendments. — D.C. Law 10-68 inserted "of the United States Secret Service Uniformed Division" after the second occurrence of "Park Police force" in paragraph (1).

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of

Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — Title II of the Social Security Act, referred to in subdivision (1) of this section, is codified as 42 U.S.C. §§ 401 to 433.

Chapter 21 of the Internal Revenue Code of 1986, referred to in subdivision (1) of this section, is codified as 26 U.S.C. § 3101 et seq.

"Chapter 84 of title 5, United States Code," referred to in subdivision (1) of this section, is codified as 5 U.S.C. § 8401 et seq.

"This act," referred to at the end of paragraph (10) of this section, means the Act of September 1, 1916, ch. 433.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Purpose of Police and Firefighters Disability Act. — The Police and Firefighters Disability Act was promulgated to provide a compensation scheme for District of Columbia uniformed personnel, who were excluded from coverage under the statute generally applicable to other District of Columbia employees, the Federal Employees Compensation Act. *Lewis v. District of Columbia*, App. D.C., 499 A.2d 911 (1985).

"Grade or class of position" is defined by rank or salary, or both. *Echard v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 422 A.2d 1275 (1980).

Term "class of position" is narrower than term "grade" which embraces wide variety of jobs in classified civil service. *Jones v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 375 A.2d 1 (1977).

Interpretation of disability. — An officer is "disabled" if he is unable to perform work in any position at the same salary level as he previously earned. *Wells v. Police & Firefighter's Retirement & Relief Bd.*, App. D.C., 459 A.2d 136 (1983).

The term "useful and efficient service," as used in paragraph (2), need not be a petitioner's old job. *DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 620 A.2d 868 (1993).

Petitioner must establish disability from performing any job in the same grade or class as his last job before qualifying under paragraph (2) of this section. *Seabolt v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 413 A.2d 908 (1980).

Petitioner bears the burden of showing that there is no job available which he can perform in the grade or class of position he last occupied. *Wells v. Police & Firefighter's Retirement & Relief Bd.*, App. D.C., 459 A.2d 136 (1983).

Evidence sufficient to raise issue of disability. — Evidence was sufficient to raise question of whether police officer seeking disability retirement was disabled for "useful and efficient service" where it was shown that the duties the police officer performed on light duty only required about 1½ hours per week. *Martin v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 532 A.2d 102 (1987).

Effect of employer's failure to place and keep petitioner employed in appropriate job. — A petitioner will be able to show that no appropriate job is available if the department fails to place and keep him employed in

such a job. *Wells v. Police & Firefighter's Retirement & Relief Bd.*, App. D.C., 459 A.2d 136 (1983).

Finding as to whether officer or firefighter not given useful and efficient work required. — Where the Retirement Board denied officer's request for disability retirement, the Board could not dispense with a finding as to whether the officer had shown that he was not given useful and efficient work, unless the Board expressly found that he was not genuinely disabled from limited duty during the relevant period before his termination. *Holderbaum v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 579 A.2d 213 (1990).

Decision of the Police and Firefighters Retirement and Relief Board, which determined that an injured firefighter was not totally disabled, was vacated where the Board failed to determine whether the firefighter was accorded an opportunity to work in a position in which he could perform "useful and efficient service" after being reassigned to guard a firehouse. *DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 620 A.2d 868 (1993).

Where police officer was discharged for mental disability not caused or aggravated in the line of duty, he was not entitled to a pension. *Wingo v. Washington*, 395 F.2d 633 (D.C. Cir. 1977).

Fireman is not disabled where he can perform non-firefighting duties at the same or a higher class position with no reduction in pay, although he cannot perform the same duties and responsibilities as previously by reason of a respiratory ailment. *Coakley v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 370 A.2d 1345 (1977).

Officer not disabled where able to perform useful and efficient service. — A police officer was not disabled where evidence supports a finding that he could still perform useful and efficient service for the department even though he could no longer perform his old job or any position entailing full police duties. *Wells v. Police & Firefighter's Retirement & Relief Bd.*, App. D.C., 459 A.2d 136 (1983).

Employee able to perform light duty was not permanently disabled. — An employee who is able to perform light duty in his present grade, but is ineligible for promotion due to his work-related injury, is not permanently disabled and is not entitled to disability retirement under § 4-616(a). *Smith v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 460 A.2d 997 (1983).

Loss of vision. — Given that Secret Service agent has lost his central vision in one eye, has poor depth perception and peripheral vision and impaired ability to see at night, the District of Columbia Police and Firefighters' Re-

tirement and Relief Board's conclusion that the agent is physically capable of performing useful and efficient service in the grade or class of position last occupied by him is not supported by the evidence. *Szego v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1233 (1987).

Cited in *Rudolph v. United States ex rel. Rock*, 6 F.2d 487 (D.C. Cir.), cert. denied, 269 U.S. 559, 46 S. Ct. 20, 70 L. Ed. 411 (1925); *Dougherty v. United States ex rel. Roberts*, 30 F.2d 471 (D.C. Cir. 1929); *Wham v. United States*, 81 F. Supp. 126 (D.D.C. 1949), rev'd on other grounds, 180 F.2d 38 (D.C. Cir. 1950); *Bradshaw v. United States*, 443 F.2d 759 (D.C.

Cir. 1971); *Anthony v. Norfleet*, 330 F. Supp. 1211 (D.D.C. 1971); *Rzepecki v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 1388 (1981); *Smith v. Whitehead*, App. D.C., 436 A.2d 339 (1981); *Walsh v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 523 A.2d 562 (1987); *Price v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 542 A.2d 1249 (1988); *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 560 A.2d 492 (1989); *Croskey v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 596 A.2d 988 (1991).

§ 4-608. Application of amendments to §§ 4-607 and 4-622.

The amendments made by Pub. L. 96-122, § 206(a), to §§ 4-607 and 4-622 shall apply with respect to survivor annuities under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, § 4-607 et seq.) for survivors of officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia which commence on or after the 1st day of the 1st month which begins after the end of the 90-day period beginning on November 17, 1979. (1973 Ed., § 4-521.1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 206(b).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614,

4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

§ 4-609. United States Secret Service Division; transfer of civil service funds; credit for prior service with other police forces.

Whenever any member of the United States Secret Service Division has actively performed duties other than clerical for 10 years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund continued by §§ 8331(5) and 8348 of Title 5, United States Code, to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under §§ 4-607 to 4-630, and he shall be entitled to the same benefits as the other members to whom such sections apply. Any member of the United States Secret Service Division appointed from the United States Secret Service Uniformed Division and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with the Metropolitan Police force, the United States Park Police force, or the United States Secret Service Uniformed Division toward the required 10 years or more service. (Sept. 1, 1916, ch. 433, § 12(b);

Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-476, § 1; 1973 Ed., § 4-522; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

§ 4-610. Creditable service.

(a) A member's service for the purposes of §§ 4-607 to 4-630 shall mean all police or fire service and such military and government service as is authorized by such sections prior to the date of separation upon which title to annuity is based.

(b)(1) Each member shall be allowed credit for periods of military service served prior to the date of the separation upon which the annuity is based; however, if a member is awarded retired pay on account of military service, such military service shall not be included, unless such retired pay is awarded on account of a service-connected disability:

(A) Incurred in combat with an enemy of the United States; or

(B) Caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part I, paragraph I, or is awarded under §§ 101, 676, 1001, 1332 to 1337, 1401, 3966, 6017, 6034, 6323, and 8966 of Title 10, United States Code.

(2) Nothing in §§ 4-607 to 4-630 shall affect the rights of members to retired pay, pension, or compensation in addition to the annuity herein provided.

(c) Credit shall be allowed for leaves of absence granted a member while performing military service, excluding from credit so much of any other leaves of absence without pay as may exceed 6 months in the aggregate in any calendar year.

(d) A member who, during any war or national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service shall not be considered, for the purposes of §§ 4-607 to 4-630, as separated from his position by reason of such military service, unless he shall apply for and receive his salary deductions: Provided, that such member shall not be considered as retaining such position beyond December 31, 1957, or the expiration of 5 years of such military service, whichever is later.

(e)(1) A member shall be allowed credit for government service performed prior to appointment in any of the departments mentioned in paragraph (1) of § 4-607, if such member deposits a sum equal to the entire amount, including interest (if any), refunded to him for such period of government service. A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia shall deposit such sum, plus

interest computed in accordance with paragraph (2) of this subsection, with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712. All other members shall deposit such sums with the Mayor of the District of Columbia for credit to the revenues of the District of Columbia. If the member so elects, he may deposit the total amount of such refund in monthly installments not exceeding 24, except that in the case of a member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, such monthly installments shall be of equal amounts. No deposit shall be required for days of unused sick leave credited under § 4-618.

(2) Interest required on deposits under this subsection for members who are officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one eighth of 1%) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712) for the period beginning on the 1st day of the 1st month which begins after the end of the service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the 1st monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one eighth of 1%) shall be used in determining the interest rate to be paid on deposits under this subsection;

(B) Interest shall be payable for the period beginning on the 1st day of the 1st month which begins after the end of the period of service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made; and

(C) If a member elects to make his deposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited.

(f)(1) Any period of time during which a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia is on approved leave without pay to serve as a full-time officer or employee of a labor organization shall be considered to be police or fire service for purposes of §§ 4-607 to 4-630 if such member files an election in accordance with paragraph (2) of this subsection and makes payments as described in paragraph (3) of this subsection. The basic salary in effect at any time for the grade in which a member was serving at the time he entered on approved leave described in the preceding sentence shall be considered to be the basic salary in effect for such member for purposes of §§ 4-607 to 4-630 if the period of time when such member is on approved leave is considered to be police or fire service under this subsection.

(2) To be eligible to have any period of approved leave described in paragraph (1) of this subsection considered to be police or fire service for purposes of §§ 4-607 to 4-630, a member described in such paragraph must, not later than the end of the 60-day period commencing on the day such member enters on such approved leave or the effective date of this subsection, whichever occurs later, file an election with the Mayor to have such period of approved leave considered to be police or fire service for purposes of §§ 4-607 to 4-630.

(3)(A) To have any period of approved leave described in paragraph (1) of this subsection occurring after the effective date of §§ 4-607 to 4-630 considered to be police or fire service, a member described in such paragraph must each month deposit with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712 a sum equal to one-twelfth the annual new entrant normal cost of the annuity of a member receiving the basic salary in effect during such month for the grade in which such member was serving at the time such member entered on such leave.

(B) To have any period of approved leave described in paragraph (1) of this subsection which occurred before the effective date of §§ 4-607 to 4-630 considered to be police or fire service, a member described in such paragraph must deposit with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712, in a manner to be determined by the Mayor, a sum equal to the new entrant normal cost of the annuity of a member receiving the basic salary in effect during the period of such leave for the grade in which such member was serving at the time such member entered on such leave.

(C) The Mayor shall make an annual determination of the new entrant normal cost for purposes of subparagraphs (A) and (B) of this paragraph according to information supplied by the actuary retained pursuant to § 1-722.

(4) For purposes of this subsection, the term "labor organization" means any labor organization recognized as an exclusive representative of members or officers of the Metropolitan Police force or the Fire Department of the District of Columbia for purposes of collective bargaining pursuant to § 1-618.10.

(g) The total service of a member shall be the full years and 12th parts thereof, excluding from the aggregate any fractional part of a month.

(h) Notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under this act to such individual or to the surviving spouse or child is to be based, if such individual or the surviving spouse or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old age or survivors benefits under § 202 of the Social Security Act based on such individual's wages and self-employment income. If in the case of the individual or the surviving spouse such military service is not excluded under the preceding sentence, but upon attaining re-

tirement age (as defined in § 216(a) of the Social Security Act) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the Mayor shall redetermine the aggregate period of service upon which such annuity is based, effective as of the 1st day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health and Human Services shall, upon the request of the Mayor, inform the Mayor whether or not any such individual or the surviving spouse or child is entitled at any specified time to such benefits. (Sept. 1, 1916, ch. 433, § 12(c); Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3; Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(2); 1973 Ed., § 4-523; Oct. 1, 1976, D.C. Law 1-87, § 9, 23 DCR 2544; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 202(a), 208(a)(2); Mar. 24, 1990, D.C. Law 8-97, § 5, 37 DCR 1046.)

Cross references. — As to the retired police officer redeployment act, see § 4-618.1.

Section references. — This section is referred to in §§ 1-624.1, 1-712, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-611, 4-612, 4-614, 4-615, 4-618, 4-618.1, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, 6-1403, and 9-120.

Emergency act amendments. — For temporary eligibility of police officers retired from the Metropolitan Police Force to be rehired at the discretion of the Superintendent of the D.C. Public Schools as D.C. public school security personnel without jeopardy to their retirement benefits, see § 2 of the Retired Police Officer Public Schools Security Personnel Deployment Emergency Amendment Act of 1993 (D.C. Act 10-21, April 29, 1993, 40 DCR 2864).

Legislative history of Law 1-87. — See note to § 4-607.

Legislative history of Law 8-97. — Law 8-97, the "District of Columbia Comprehensive Retirement Reform Amendments Act of 1989," was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1990, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

References in text. — Veterans Regulation No. 1(a), part I, paragraph I, referred to in subsection (b)(1)(B) of this section, was promulgated by Executive Order No. 6156, June 6, 1933 and was repealed by the Act of June 17, 1957, 71 Stat. 167, Pub. L. 85-56, § 2202.

The "effective date of this subsection," referred to in subsection (f)(2), is prescribed by § 202(b) of the Act of November 17, 1979, 93 Stat. 914, Pub. L. 96-122.

The "effective date of §§ 4-607 to 4-630," referred to twice in subsection (f)(3), is prescribed

by § 202(b) of the Act of November 17, 1979, 93 Stat. 914, Pub. L. 96-122.

Section 202 of the Social Security Act, referred to in subsection (h) of this section, is codified as 42 U.S.C. § 402.

Former subsection (a) of § 216 of the Social Security Act, which defined retirement age and which is referred to in subsection (h) of this section, was repealed by § 102(c)(1) of the Act of June 30, 1961, 75 Stat. 134, Pub. L. 87-64. Retirement age is defined by 42 U.S.C. § 416(e).

"This act," referred to in subsection (h) of this section, means the Act of September 1, 1916, ch. 433.

Secretary of Health and Human Services, referred to in subsection (h) of this section, was substituted for Secretary of Health, Education and Welfare pursuant to the Act of October 17, 1979, 93 Stat. 695, Pub. L. 96-88, § 509.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Credit for time served in nonduty status. — This section does not permit the crediting to a member's service of time served in a nonduty status except when on annual or sick leave.

Markovich v. Nichols, App. D.C., 429 A.2d 176 (1981).

Effect of leave of absence to enter military. — Leave of absence without pay, given a member of the Metropolitan Police force when he entered the Marine Corps, did not terminate his membership in the force or constitute retirement. Thompson v. Young, 53 F. Supp. 890 (D.D.C. 1946).

§ 4-611. Application of amendment to § 4-610.

The amendments made by Pub. L. 96-122, § 208(a)(2), to § 4-610 shall not apply with respect to deposits made, in whole or in part, prior to the end of such 90-day period. (1973 Ed., § 4-523.1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 208(b).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614,

4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

§ 4-612. Deductions, deposits, and refunds; order of persons entitled to refunds for deductions.

(a) On and after the 1st day of the 1st pay period which begins on or after the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970 there shall be deducted and withheld from each member's basic salary an amount equal to 7% of such basic salary. In the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, such deductions and withholdings shall be paid to the Custodian of Retirement Funds (as defined in § 1-702(6)) and shall be deposited in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712; and in the case of any other member, such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.

(b)(1) Any member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, who is separated from his department, except for retirement as authorized by §§ 4-607 to 4-630, shall be refunded the amount of the deductions made from his salary under such sections. The receipt of payment of such deductions by such member shall void all annuity rights under such sections, unless and until such member shall be reappointed to any department whose members come under such sections. If such officer or member is subsequently reappointed to any department whose members come under such sections, he shall be required to redeposit the amount of deductions so refunded to him.

(2) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia with less than 5 years of police or fire service who is separated from his department, except for

retirement under § 4-615, 4-616, or 4-618, shall be refunded the amount of the deductions made from his salary under §§ 4-607 to 4-630. The receipt of payment of such deductions by such member shall void all annuity rights under §§ 4-607 to 4-630, except that if such member is subsequently reappointed to any department whose members come under §§ 4-607 to 4-630 and such member elects, at the time of such reappointment, to redeposit the amount refunded to him pursuant to the preceding sentence plus interest computed in accordance with § 4-623(c), then credit shall be allowed under §§ 4-607 to 4-630 for the prior period of service. Such redeposit (and the interest required thereon) may be made, at the election of the member, in a lump sum or in not to exceed 60 monthly installments, except that if such member dies before depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(c) In order to facilitate the settlement of the accounts of each member coming under the provisions of §§ 4-607 to 4-630 who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of such sections, the Mayor shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

(1) To the beneficiary or beneficiaries designated in writing by such member, filed with the Mayor and received by him prior to the death of such member;

(2) If there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

(3) If there be none of the above, to the parents of such member, or the survivor of them;

(4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member; provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto.

(d) In order to facilitate the settlement of the accounts of each former member coming under the provisions of §§ 4-607 to 4-630 who dies leaving no survivor entitled to receive an annuity under the provisions of §§ 4-607 to 4-630 and before the aggregate amount of the annuity paid to such former member equals the total amount deducted and withheld for retirement from his salary as a member, the Mayor shall pay the difference to the person or persons surviving at the time of death in the following order of precedence, and such payment shall be a bar to recovery by any other person of the amount so paid:

(1) To the beneficiary or beneficiaries designated in writing by such former member, filed with the Mayor and received by him prior to the death of such former member;

(2) If there be no such beneficiary, to the child or children of such deceased former member and the descendants of deceased children by representation;

(3) If there be none of the above, to the parents of such former member, or the survivor of them; and

(4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased former member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased former member: provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto. (Sept. 1, 1916, ch. 433, § 12(d); Aug. 21, 1957, 71 Stat. 393, Pub. L. 85-157, § 3; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-693, § 1; Oct. 26, 1970, 84 Stat. 1136, Pub. L. 91-509, § 1(13); 1973 Ed., § 4-524; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 122(b)(1), 208(a)(1).)

Cross references. — As to salary, see § 4-406 et seq.

Section references. — This section is referred to in §§ 1-624.1, 1-712, 4-314, 4-415, 4-601, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

References in text. — The effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, referred to in the first sentence of subsection (a) of this section, is prescribed by § 2 of the Act of October 26, 1970, 84 Stat. 1136, Pub. L. 91-509.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Govern-

mental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Restoration of withdrawals. — There is no inequity in requiring a member returning to the force to restore money which he had withdrawn. *District of Columbia v. Smith*, 72 F.2d 735 (D.C. Cir. 1934).

§ 4-613. Payment of medical expenses — Active members.

Whenever any member shall become temporarily disabled by injury received or disease contracted in the performance of duty, to such an extent as to require medical or surgical services, other than such as can be rendered by the Mayor, or to require hospital treatment, the expense of such medical or surgical services, or hospital treatment, shall be paid by the District of Columbia; but no such expense shall be paid except upon a certificate of the Mayor setting forth the necessity for such services or treatment and the nature of the

injury or disease which rendered the same necessary. (Sept. 1, 1916, ch. 433, § 12(e); Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; 1973 Ed., § 4-525.)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section and 5 U.S.C. § 6324 essentially comprise workmen's compensation plan for uniformed District employees. Brown v. Jefferson, App. D.C., 451 A.2d 74 (1982).

Applicability of collateral source rule. — Where money paid for medical and hospital expenses of injured policemen and firemen come from District revenues and employee contributions, a policeman is entitled, under the collateral source rule, to recover for medical and hospital expenses in his suit against the United States. Bradshaw v. United States, 443 F.2d 759 (D.C. Cir. 1971).

§ 4-614. Same — Total disability retirees.

(a) Subject to the provisions of subsection (b) of this section, the District of Columbia shall pay the reasonable costs of medical, surgical, hospital, or other related health care services of any officer or member of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division who:

(1) Retires after August 16, 1971, under § 4-616; and

(2) At the time of such retirement, has a disability caused by injury or disease contracted or aggravated in the line of duty, which is determined by, or under regulations of, the Mayor of the District of Columbia (hereafter in this section referred to as the "Mayor") to be a total disability.

(b) No payment may be made under this section for medical, surgical, hospital, or other related health care services provided a retired officer or member unless:

(1) At the time such services are provided the disability of the retired officer or member has been determined by, or under regulations of, the Mayor to be a total disability;

(2) Such services have been determined by, or under regulations of, the Mayor to be necessary and directly related to the treatment of the injury or disease which caused the disability of the retired officer or member; and

(3) The retired officer or member submits to such medical examinations as the Mayor may require.

(c) The Mayor may determine that the disability of a retired officer or member is a total disability only if the Mayor finds that the retired officer or

member is unable (because of the injury or disease causing his disability) to secure or follow substantially gainful employment. In determining whether employment is substantially gainful employment, the Mayor shall take into account the amount of expenses incurred by, or which can reasonably be expected to be incurred by, the retired officer or member in securing the medical, surgical, hospital, or other related health care services necessitated by his disability, and such other factors as the Mayor deems advisable.

(d) In addition to any medical examination required under §§ 4-607 to 4-613 and 4-615 to 4-630, the Mayor shall require, in each year that payments under this section are made with respect to any retired officer or member, a medical review of the disability of such retired officer or member.

(e) The Mayor may provide for payments under this section to be made either directly to the retired officer or member or to the provider of the medical, surgical, hospital, or other related health care services.

(f) The Mayor shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(g) There are authorized to be appropriated from revenues of the United States such sums as may be necessary to reimburse the District of Columbia, on a monthly basis, for payments made under this section from revenues of the District of Columbia in the case of retired officers or members of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division. (Aug. 16, 1971, 85 Stat. 341, Pub. L. 92-121, §§ 1-3; 1973 Ed., § 4-525a; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate

changes in terminology were made in this section.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Exclusive remedy for a disability retiree who is seeking compensation for injuries alleged as a result of medical services provided by the District of Columbia is under this chapter. Ray v. District of Columbia, App. D.C., 535 A.2d 868 (1987).

District of Columbia could not be deemed dual employer in order to expand remedies. — Where continuing medical services were provided based on the initial employer/employee relationship between the District and disability retiree, there was no basis for ruling that the District of Columbia operated in a dual capacity and the District of Columbia may not be deemed other than employer in order to permit a remedy beyond that found in this chapter. Ray v. District of Columbia, App. D.C., 535 A.2d 868 (1987).

Cited in Young v. Sherwin-Williams Co., App. D.C., 569 A.2d 1173 (1990).

§ 4-615. Retirement for disability — Not incurred in performance of duty.

(a) Except as provided in subsection (b) of this section, whenever any member coming under §§ 4-607 to 4-630 completes 5 years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2% of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay; provided further, that the annuity of a member retiring under this section shall be at least 40% of his average pay.

(b) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, completes 5 years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity which shall be 70% of his basic salary at the time of retirement multiplied by the percentage of disability for such member as determined in accordance with § 4-616(e)(2)(B), except that such annuity shall not be less than 30% of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(f); Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; 1973 Ed., § 4-526; Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(1); Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 10(a); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 204(b)(1).)

Cross references. — As to salary, see § 4-406 et seq.

Section references. — This section is referred to in §§ 1-624.1, 1-725, 4-181, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-616, 4-618, 4-620, 4-622, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Retirement under this section may be considered as inherently involuntary, to the extent that disability is ordinarily not desired. *Monica v. Tobriner*, 253 F. Supp. 851 (D.D.C. 1963).

Standard of proof. — Where Police Department initiates a proceeding to retire an officer against his will and for a disability which is alleged to be unrelated to his official service, evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *Blohm v. Tobriner*, 350 F.2d 785 (D.C. Cir. 1965); *Carroll v. Tobriner*, 253 F. Supp. 87 (D.D.C. 1966).

Balancing test required. — In cases in which a claimant's disability is brought on by a combination of service-connected and nonservice-connected circumstances, the Police and Firemen's Retirement and Relief Board

must conduct a balancing test to determine the relative causative significance of each class of factors. *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980).

When claimant contends that nonduty-related disorder was aggravated to point of disability by duty-related circumstances, the burden of proof is on the claimant, and the Police and Firemen's Retirement and Relief Board must decide whether the service-connected aggravating factors outweigh the extrinsic causes of the disabling condition. *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980).

On-duty injuries were not only aggravations. — Weight of the evidence did not support Police and Firefighters Retirement and Relief Board's decision that the on-duty injuries were only aggravations. *Batty v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 537 A.2d 204 (1988).

Pre-existing non-duty related injury aggravated by later duty related injury. — When a duty related injury aggravates a pre-existing non-duty related injury with the result that the pre-existing injury or condition still contributes to the disability, a claimant is not entitled to the higher level of benefits provided by § 4-616. *Croskey v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 596 A.2d 988 (1991).

When a later duty related injury is so serious that it would have itself caused the disability, regardless of the existence of a previous non-duty related injury or condition, the disability can be said to result directly from the duty related injury, and the claimant will be entitled to the higher level of benefits under § 4-616. *Croskey v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 596 A.2d 988 (1991).

Job frustration. — A fireman's job frustration stemming from his belief that the job was beneath his dignity and education was sufficient to sustain finding that the fireman was retired by reason of disability not incurred in nor aggravated by performance of duty as fireman. *Lewis v. District of Columbia Bd. of Appeals & Review*, App. D.C., 330 A.2d 253 (1974).

Military service not counted. — Under this section, a policeman who became disabled, not in performance of duty, after serving 4 years and 10 months in the Police Department, was not entitled to statutory benefits on the theory that his former military service should be counted. *Tobriner v. O'Donnell*, 336 F.2d 743 (D.C. Cir.), cert. denied, 379 U.S. 840, 85 S. Ct. 79, 13 L. Ed. 2d 47 (1964).

Increase in annuity rates not retroactive. — A policeman who was retired for disability

was not entitled to the benefit of this section, enacted subsequent to his retirement, providing for higher annuity rates. *Zangardi v. Tobriner*, 348 F.2d 370 (D.C. Cir. 1965).

Decisions of Police and Firemen's Retirement Board are not excepted from judicial review. *Johnson v. Board of Appeals & Review*, App. D.C., 282 A.2d 566 (1971), cert. denied, 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232 (1972).

Appellate proceeding is a "contested case." — The proceeding before the Board of Appeals and Review to review an order of the Police and Firemen's Retirement Board involuntarily separating the petitioner from the Police Department for a disability not contracted or aggravated by the performance of duty is a "contested case," and all of the procedures in § 1-1509 are applicable. *Brewington v. District of Columbia Bd. of Appeals & Review*, App. D.C., 287 A.2d 532 (1972).

Cited in *Taylor v. Tobriner*, 346 F.2d 797 (D.C. Cir. 1964); *Carroll v. District of Columbia Bd. of Appeals & Review*, App. D.C., 292 A.2d 161 (1972); *Brewington v. District of Columbia Bd. of Appeals & Review*, App. D.C., 309 A.2d 112 (1973); *Coakley v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 370 A.2d 1345 (1977); *Jones v. Police & Fireman's Retirement & Relief Bd.*, App. D.C., 375 A.2d 1 (1977); *Kirven v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 379 A.2d 1186 (1977); *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 384 A.2d 29 (1978); *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979); *Markovich v. Nichols*, App. D.C., 429 A.2d 176 (1981); *Rzepecki v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 1388 (1981); *Perry v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 451 A.2d 88 (1982); *Polen v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 466 A.2d 464 (1983); *Kirkwood v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 468 A.2d 965 (1983); *Dowd v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 485 A.2d 212 (1984); *Walsh v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 523 A.2d 562 (1987); *Baumgartner v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 527 A.2d 313 (1987); *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1225 (1987); *Szego v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1233 (1987); *Price v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 542 A.2d 1249 (1988); *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C.,

560 A.2d 492 (1989); DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 620 A.2d 868 (1993).

§ 4-616. Same — Incurred or aggravated in performance of duty.

(a) Except as provided in subsection (e) of this section, whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall, upon retirement for such disability, receive an annuity computed at the rate of $2\frac{1}{2}\%$ of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay, nor shall it be less than $66\frac{2}{3}\%$ of his average pay.

(b) In any case involving a member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, in which the proximate cause of injury incurred or disease contracted by the member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of $2\frac{1}{2}\%$ of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay, nor shall it be less than $66\frac{2}{3}\%$ of his average pay.

(c) A member shall be retired under this section only upon the recommendation of the Board of Police and Fire Surgeons and the concurrence therein by the Mayor, except that in any case in which a member seeks his own retirement under this section, he shall, in the absence of such recommendation, provide the necessary evidence to form the basis for the approval of such retirement by the Mayor.

(d)(1) A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia may not retire and receive an annuity under this section on the basis of the aggravation in the performance of duty of an injury incurred or a disease contracted in the performance of duty unless:

(A) In the case of the aggravation of a disease, the disease was reported to the Board of Police and Fire Surgeons within 30 days after the disease was first diagnosed; or

(B) In the case of the aggravation of an injury, the injury was reported to the Board of Police and Fire Surgeons within 7 days after the injury was incurred or, if the member was unable (as determined by such Board) as a result of the injury to report the injury within such 7-day period, within 7 days after the member became able (as determined by such Board) to report the injury.

(2) The burden of establishing inability to report an injury in accordance with subparagraph (B) of paragraph (1) of this subsection within 7 days after such injury was incurred and of establishing that such injury was reported within 7 days after the end of such inability shall be on the member claiming such inability. Any report under this subsection shall include adequate medical documentation. Nothing in this subsection shall be deemed to alter or affect any administrative regulation or requirement of the Metropolitan Police force or the Fire Department of the District of Columbia with respect to the reporting of an injury incurred or aggravated, or any disease contracted or aggravated, in the performance of duty.

(e)(1) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed in accordance with paragraph (2) of this subsection.

(2)(A) In the case of any member who retires under this subsection or subsection (b) of § 4-615, the Board of Police and Fire Surgeons shall determine, within a reasonable time and in accordance with regulations which the Mayor shall promulgate, the percentage of impairment for such member and shall report such percentage of impairment to the Police and Firemen's Retirement and Relief Board.

(B) In the case of any member described in subparagraph (A) of this paragraph, the Police and Firemen's Retirement and Relief Board shall determine within a reasonable time the percentage of disability for such member giving due regard to:

- (i) The nature of the injury or disease;
- (ii) The percentage of impairment reported pursuant to subparagraph (A) of this paragraph;
- (iii) The position in the Metropolitan Police force or the Fire Department of the District of Columbia held by the member immediately prior to his retirement;
- (iv) The age and years of service of the member; and
- (v) Any other factors or circumstances which may affect the capacity of the member to earn wages or engage in gainful activity in his disabled condition, including the effect of the disability as it may naturally extend into the future.

(C) The percentage of impairment or the percentage of disability for a member to whom this subsection applies may be redetermined at any time prior to the time such member reaches the age of 50 and his annuity shall be adjusted accordingly.

(D) The annuity of a member who is retired under this subsection shall be 70% of his basic salary at the time of retirement multiplied by the percentage of disability for such member as determined in accordance with subpara-

graph (B) of this paragraph, except that such annuity shall not be less than 40% of his basic salary at the time of retirement.

(E) For purposes of this subsection:

(i) The term "impairment" means any anatomic or functional abnormality or loss existing after maximal medical rehabilitation has been achieved.

(ii) The term "disability" means any actual or presumed reduction in or absence of ability to engage in gainful activity which is caused, in whole or in part, by an impairment.

(f) Not later than 90 days after November 17, 1979, the Board of Police and Fire Surgeons shall submit to the Mayor recommendations for regulations to establish specific criteria for determining whether an injury was incurred, or a disease was contracted, in the performance of duty and whether an injury or disease was aggravated in the performance of duty. The Mayor shall promulgate regulations establishing such criteria in a timely manner based on the recommendations of the Board.

(g)(1) In making determinations under this section and under § 4-615, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall make full use of the medical resources in the District of Columbia and shall make the widest practical use of the medical expertise available to them consistent with fair and even administration of Chapter 7 of Title 1.

(2) Not later than 90 days after November 17, 1979, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall each submit to the Mayor recommendations for regulations to carry out the requirements of paragraph (1) of this subsection. The Mayor shall, in a timely manner and based on the recommendations of such Boards, promulgate regulations to carry out the requirements of such paragraph.

(3) Failure to promulgate such regulations, or failure to comply with such regulations, shall not invalidate any decision of the Mayor or the Police and Firemen's Retirement and Relief Board with respect to the retirement of any individual. (Sept. 1, 1916, ch. 433, § 12(g); Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(4); 1973 Ed., § 4-527; Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(1), (2), (c); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 204(a), (b)(2), 213.)

Cross references. — As to salary, see § 4-406 et seq. As to payment of medical expenses of total disability retirees, see § 4-614.

Section references. — This section is referred to in §§ 1-624.1, 1-725, 4-181, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-617, 4-618, 4-620, 4-622, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited

as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Right of action under Tort Claims Act. — Where a policeman member is injured while on duty by the negligence of a government employee, he has a right of action against the United States under the Federal Tort Claims Act. *Wham v. United States*, 180 F.2d 38 (D.C. Cir. 1950).

Liberal construction. — Public policy requires that the disability provisions be construed liberally. *Lynch v. Tobriner*, 237 F. Supp. 313 (D.D.C. 1965).

Section was enacted to rectify abuse of statute by firefighters and police officers who retire early based on claims that preexisting nonduty related conditions were aggravated in the performance of duty to the point of causing permanent disability. *Brown v. Jefferson*, App. D.C., 451 A.2d 74 (1982).

Application of section. — This section applies only to on-duty aggravation of injuries incurred in the performance of duty; it excludes an on-duty aggravation of an off-duty injury. *Polen v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 466 A.2d 464 (1983).

This section does not address a situation where on-the-job duties aggravate an injury or disease of unknown origin — particularly where the original injury or disease is found to predate employment with the department. *Kirkwood v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 468 A.2d 965 (1983).

Unless the Board is able to find, based on the preponderance of the evidence, that an original injury or disease is related to the performance of police or fire department duties, a disability based on duty-related aggravation does not fall within this section. *Kirkwood v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 468 A.2d 965 (1983).

Exclusiveness of remedy. — Exclusive remedy for a disability retiree who is seeking compensation for injuries alleged as a result of medical services provided by the District of Columbia is under this chapter. *Ray v. District of Columbia*, App. D.C., 535 A.2d 868 (1987).

District of Columbia could not be deemed dual employer in order to expand

remedies. — Where continuing medical services were provided based on the initial employer/employee relationship between the District and disability retiree, there was no basis for ruling that the District operated in a dual capacity and the District may not be deemed other than employer in order to permit a remedy beyond that found in this chapter. *Ray v. District of Columbia*, App. D.C., 535 A.2d 868 (1987).

Retirement under this section may be considered as inherently involuntary to the extent that disability is ordinarily not desired. *Monica v. Tobriner*, 253 F. Supp. 851 (D.D.C. 1966).

"Injury" definition not limited. — Where "injury" is used regarding disability pension, it is not limited to injuries caused by force or violence and includes any injury, or disease, or illness, arising out of and in the course of the employment, which causes the incapacity. *Lynch v. Tobriner*, 237 F. Supp. 313 (D.D.C. 1965).

Balancing test required. — In cases in which a claimant's disability is brought on by a combination of service-connected and nonservice-connected circumstances, the Police and Firemen's Retirement and Relief Board must conduct a balancing test to determine the relative causative significance of each class of factors. *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980).

Claimant has burden of establishing on-duty aggravation of his injury or disease, and he is not entitled to a favorable presumption upon a court's review of the evidence. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 384 A.2d 29 (1978).

When a claimant contends that a nonduty-related disorder was aggravated to the point of disability by duty-related circumstances, the burden of proof is on the claimant, and the Police and Firemen's Retirement and Relief Board must decide whether the service-connected aggravating factors outweigh the extrinsic causes of the disabling condition. *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980).

Finding as to whether officer not given useful and efficient work required. — Where the Retirement Board denied officer's request for disability retirement, the Board could not dispense with a finding as to whether the officer had shown that he was not given useful and efficient work, unless the Board expressly found that he was not genuinely disabled from limited duty during the relevant period before his termination. *Holderbaum v. District of Columbia Police & Firefighters Re-*

tirement & Relief Bd., App. D.C., 579 A.2d 213 (1990).

Disability not the result of firefighting. — The findings of the Police and Firefighters' Retirement and Relief Board that a firefighter's disability was not caused by his firefighting duties, but by his bad health habits, were amply supported by the evidence. *Spielman v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 624 A.2d 932 (1993).

Pre-existing non-duty related injury aggravated by later duty related injury. — When a duty related injury aggravates a pre-existing non-duty related injury with the result that the pre-existing injury or condition still contributes to the disability, a claimant is not entitled to the higher level of benefits provided by this section. *Croskey v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 596 A.2d 988 (1991).

When a later duty related injury is so serious that it would have itself caused the disability, regardless of the existence of a previous non-duty related injury or condition, the disability can be said to result directly from the duty related injury, and the claimant will be entitled to the higher level of benefits under this section. *Croskey v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 596 A.2d 988 (1991).

On-duty injuries were not only aggravations. — Weight of the evidence did not support Police and Firefighters Retirement and Relief Board's decision that the on-duty injuries were only aggravations. *Batty v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 537 A.2d 204 (1988).

Burden of proof generally. — A claimant seeking benefits under subsection (a) bears the initial burden of producing evidence that the disabling injury was incurred in the performance of duty. If the claimant makes a showing of a service-incurred injury, the opposing side must then offer substantial evidence disproving the logical inference that the ensuing disability was the long-term result of such injury. *Baumgartner v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 527 A.2d 313 (1987).

Evidence in retirement cases should be viewed favorably to applicant considering the humane purpose of retirement laws. *Hyde v. Tobriner*, 329 F.2d 879 (D.C. Cir. 1964).

In a case where a police officer contends that the disability warranting retirement occurred in the line of duty, the evidence should be considered in light of the humane purpose of the retirement laws. *Carroll v. Tobriner*, 253 F. Supp. 851 (D.D.C. 1966).

Proof of proximate cause of disability. — Where a claimant makes a showing of a service-incurred injury, the opposing side must

then offer evidence disproving the logical inference that the ensuing disability was the long-term result of such injury. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 384 A.2d 29 (1978).

Only if substantial evidence exists which could be said to disprove the inference of causation of a disability by an on-duty injury must a reviewing court uphold a finding by the Board that the government has met its burden of proof and dispelled the inference. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 384 A.2d 29 (1978).

Burden on Board to demonstrate recovery from disability. — The Board must bear the burden of demonstrating with substantial evidence that a claimant has recovered from his disability. *Kea v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 174 (1981).

Evidentiary standard for assessing Board's conclusion. — The sufficiency of the evidence to support the Board's findings is not measured under a clear preponderance of the evidence standard. The Board's conclusion need only be well supported by the evidence which was before it. *Echard v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 422 A.2d 1275 (1980).

Personnel file required consideration. — A fireman's personnel file, in which was referred a fire in which he claimed to have injured himself, required consideration of his claim to retirement on the basis of disability incurred in the performance of duties. *Lovell v. Tobriner*, 310 F.2d 870 (D.C. Cir. 1962).

Scope of judicial review. — If the Court of Appeals, upon examining the record as a whole, concludes that the findings of the Police & Firemen's Retirement & Relief Bd., are supported by substantial evidence, it must accept those findings, even though there may also be substantial evidence in the record to support a contrary finding. On the other hand, the court will not hesitate to reverse a board decision that is not based on substantial evidence. *Baumgartner v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 527 A.2d 313 (1987).

Qualifying disabilities include psychological impairments. *Stoner v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 368 A.2d 524 (1977).

Aggravation of psychological illness. — A Metropolitan Police officer with some pre-existing and nonservice-related psychological problem, who becomes disabled when this problem is aggravated by a service-connected injury or illness, does not qualify under this section for an annuity based on performance-of-duty aggravation and this is true even where the service-connected illness is also psychologi-

cal. *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1225 (1987).

Stress. — Where all the evidence of record indicated that the cause of a disease was uncertain, but that stress was probably a factor, a finding that such duties "played no part" in the patrolman's condition was not supported by substantial evidence. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 410 A.2d 191 (1979).

Loss of vision. — Given that Secret Service agent has lost his central vision in one eye, has poor depth perception and peripheral vision and impaired ability to see at night, the District of Columbia Police and Firefighters' Retirement and Relief Board's conclusion that the agent is physically capable of performing useful and efficient service in the grade or class of position last occupied by him is not supported by the evidence. *Szego v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 528 A.2d 1233 (1987).

Subsequent aggravation. — Where fireman's disability is obscured or concededly due to factors predating his employment, in order to be retired for service-connected disability, he must prove that his injury was subsequently aggravated by events occurring in the line of duty. *Lewis v. District of Columbia Bd. of Appeals & Review*, App. D.C., 330 A.2d 253 (1974).

Factors not constituting aggravations. — Factors contributing to worsening of fireman's mental health, specifically, stress caused by illness, setbacks, and nonpromotion within the Fire Department, do not constitute aggravations incurred in the performance of duty within the meaning of this section. *Coakley v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 370 A.2d 1345 (1977).

Disability held insufficient to establish entitlement to benefits. — Disability from performing the patrol duties associated with one's latest position with the Police Department does not establish disability conclusively for entitlement to retirement benefits. *Echard v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 422 A.2d 1275 (1980).

Employee able to perform light duty ineligible for disability retirement. — An employee who is able to perform light duty in his present grade, but is ineligible for promotion due to his work-related injury, is not permanently disabled and is not entitled to disability retirement under subsection (a) of this section. *Smith v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 460 A.2d 997 (1983).

Administrative leave without pay. — Where petitioner, a police officer, was indicted by a grand jury on charges brought by the Police Department and following his indictment, he was placed on administrative leave without

pay and was told to wait at home on an on-call basis, and where the criminal charges against him were dismissed in October, 1974, but he was kept on leave until May, 1975, any health problem arising from petitioner's indictment and subsequent administrative leave status were too tenuously related to his police work to be related to "the performance of duty" within the meaning of subsection (b) of this section. *Neer v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 415 A.2d 523 (1980).

Annuity not subject to income tax. — Monies received by members who were retired for disability is not subject to federal income tax. *Frye v. United States*, 72 F. Supp. 405 (D.D.C. 1947).

Cited in Thompson v. Young, 63 F. Supp. 887 (D.D.C. 1946); *Simms v. Commissioner*, 196 F.2d 238 (D.C. Cir. 1952); *Allen v. Spencer*, 214 F.2d 205 (D.C. Cir. 1954); *Spencer v. Bullock*, 216 F.2d 54 (D.C. Cir. 1954); *Souder v. Tobriner*, 314 F.2d 272 (D.C. Cir. 1963); *Zangardi v. Tobriner*, 330 F.2d 224 (D.C. Cir. 1964); *Tobriner v. Chefier*, 355 F.2d 281 (D.C. Cir. 1964); *Crawford v. McLaughlin*, 286 F.2d 821 (D.C. Cir. 1965); *Taylor v. Tobriner*, 346 F.2d 797 (D.C. Cir. 1965); *Blohm v. Tobriner*, 350 F.2d 785 (D.C. Cir. 1965); *Bradshaw v. United States*, 443 F.2d 759 (D.C. Cir. 1971); *Johnson v. Board of Appeals & Review*, App. D.C., 282 A.2d 566 (1971), cert. denied, 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232 (1972); *Morgan v. District of Columbia Bd. of Appeals & Review*, App. D.C., 305 A.2d 243 (1973); *Crider v. District of Columbia Bd. of Appeals & Review*, App. D.C., 299 A.2d 134 (1973); *Brooks v. District of Columbia Bd. of Appeals & Review*, App. D.C., 317 A.2d 864 (1974); *Fisher v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 351 A.2d 502 (1976); *Kirven v. Police & Firemen's Retirement Bd.*, App. D.C., 379 A.2d 1186 (1977); *Morgan v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 379 A.2d 1322 (1977); *Torvik v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 406 A.2d 1264 (1979); *Seabolt v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 413 A.2d 908 (1980); *Markovich v. Nichols*, App. D.C., 429 A.2d 176 (1981); *Rzepecki v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 1388 (1981); *Proulx v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 430 A.2d 34 (1981); *Perry v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 451 A.2d 88 (1982); *Liberty v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, App. D.C., 452 A.2d 1187 (1982); *Dowd v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 485 A.2d 212 (1984); *Ridge v. Police & Firefighters Retirement & Relief Bd.*, App. D.C., 511 A.2d 418 (1986);

Walsh v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 523 A.2d 562 (1987); Price v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 542 A.2d 1249 (1988); Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd., App. D.C., 560 A.2d 492

(1989); Young v. Sherwin-Williams Co., App. D.C., 569 A.2d 1173 (1990); DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 620 A.2d 868 (1993); Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 626 A.2d 904 (1993).

§ 4-617. Application of amendment to § 4-616.

The amendment made by Pub. L. 96-122, § 204(a)(1), to § 4-616 shall not apply with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia who apply for disability retirement under § 4-616 prior to the end of the 90-day period beginning on November 17, 1979. The amendment made by Pub. L. 96-122, § 204(a)(2), to § 4-616 shall not apply with respect to injuries incurred or diseases first diagnosed prior to the end of such 90-day period. (1973 Ed., § 4-527.1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 204(c).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614,

4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

§ 4-618. Optional retirement.

(a) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and first becomes such a member after the end of the 90-day period beginning on November 17, 1979, and who completes 25 years of police or fire service and attains the age of 50 years and any other member (other than a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who first becomes such a member after the end of such 90-day period) who completes 20 years of police or fire service may, after giving at least 60 days written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2½% of his average pay for each year of service; except that the rate of 3% of his average pay shall be used to compute each year's police or fire service in excess of:

(1) Twenty-five years, in the case of a member who becomes a member after the end of such 90-day period; or

(2) Twenty years, in the case of any other member; provided that such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver; provided further, that whenever the Mayor or the Chief of the United States Secret Service Uniformed Division, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service Division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this subsection, then the Mayor or any of said Chiefs shall be autho-

rized to suspend the retirement provisions of this subsection in any 1 or more of the departments under their respective jurisdictions until such time as, in the opinion of the Mayor or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(b) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of 60 years shall, in the discretion of the Mayor, and any member of the United States Secret Service Uniformed Division or of the United States Park Police force or of the United States Secret Service Division to whom §§ 4-607 to 4-630 apply shall, in the discretion of the head of his department, be retired from the service and shall be entitled to receive an annuity as computed under subsection (a) of this section.

(c) No annuity granted under subsection (a) or (b) of this section shall exceed 80% of the basic salary of such member at the time of retirement.

(d) In computing an annuity under this section, the police or fire service of a member who has not retired prior to the effective date of this subsection shall include, without regard to the limitation imposed by subsection (c) of this section, the days of unused sick leave credited to him. Days of unused sick leave shall not be counted in determining a member's eligibility for an annuity under this section.

(e) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 18 years of police or fire service may voluntarily retire from the service on or before December 31, 1980, and shall be entitled to an annuity computed at the rate of 2½% of the average pay of such member or officer for each year of service; provided, that the amortization payment to the District of Columbia Retirement Board for the District of Columbia Police Officers and Fire Fighters' Retirement Fund shall be made from appropriations of the Metropolitan Police and Fire Departments. (Sept. 1, 1916, ch. 433, § 12(h); Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(5), (6); Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(3); 1973 Ed., § 4-528; Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(1)-(3); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 203; Mar. 4, 1981, D.C. Law 3-128, § 8, 28 DCR 246; Mar. 5, 1981, D.C. Law 3-133, § 4, 27 DCR 4417.)

Cross references. — As to salary, see § 4-406 et seq.

Section references. — This section is referred to in §§ 1-624.1, 4-107, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-622, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Legislative history of Law 3-128. — Law 3-128, the "Closing of a Portion of a Public Alley in Square 5263; the Police Officers, Firefighters, and Teachers Retirement Amendments; the District of Columbia Depository Act of 1977 Amendments; and the District of Columbia Motor-Vehicle Fuel and Sales Tax Act

and the District of Columbia Sales Tax Act Amendments of 1980 Act of 1980," was introduced in Council and assigned Bill No. 3-394, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-337 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-133. — Law 3-133, the "Securities Act Amendments, Personnel Act Clarification, and Voluntary Retirement Act of 1980," was introduced in Council

and assigned Bill No. 3-273, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 29, 1980, and September 16, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-254 and transmitted to both Houses of Congress for its review.

References in text. — The phrase “the effective date of this subsection,” referred to in the first sentence of (d), is prescribed by § 201(b) of Pub. L. 92-410, effective August 29, 1972, which states, that in part, “The amendments made by paragraphs (2) and (3) of subsection [(a)] shall be effective on the first day of the first pay period beginning on or after the date of enactment of this title.”

Policemen and Firemen’s Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen’s Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Coverage Under Federal Employees’ Retirement Act. — See note to § 4-602.

Fireman suspended for misconduct is still a “member” of the Fire Department. *Daigle v. McLaughlin*, 193 F. Supp. 902 (D.D.C. 1961).

Cited in *Spencer v. Bullock*, 216 F.2d 54 (D.C. Cir. 1954).

§ 4-618.1. Retired police officer redeployment.

(a) Except for a disability annuitant, a police officer retired from the Metropolitan Police Department shall be eligible for rehire at the discretion of the Chief of the Metropolitan Police Department as a fully sworn temporary full-time or temporary part-time police officer without jeopardy to the retirement benefits of the police officer.

(b) A retired police officer who is rehired under this section shall be vested with full police powers, including, but not limited to, the authority to carry a firearm.

(c) Service under this section shall not count as creditable service for the purposes of § 4-610.

(d) A retired police officer who is rehired under this section shall be paid a salary of no more than that equal to the salary paid a class 1, step 1 officer and shall not be eligible for longevity pay.

(e) Notwithstanding subsection (d) of this section, a rehired annuitant shall not be required to refund any salary paid prior to January 5, 1993.

(f) No retired police officer who is rehired under this section shall be detailed to any agency of the District of Columbia government other than the Metropolitan Police Department. (July 22, 1992, D.C. Law 9-132, § 2, 39 DCR 4058; Sept. 29, 1992, D.C. Law 9-163, § 2, 39 DCR 5705; Mar. 31, 1993, D.C. Law 9-265, § 2, 40 DCR 1154; Sept. 30, 1993, D.C. Law 10-17, § 2, 40 DCR 5453.)

Effect of amendments. — D.C. Law 10-17 added (d), (e), and (f).

Temporary addition of section. — Section 2 of D.C. Law 9-132 added this section.

Section 5(b) of D.C. Law 9-132 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Retired Police Officer Redeployment Amendment Act of 1992, whichever occurs first.

Temporary amendments of section. — Section 2 of D.C. Law 9-265 added (d), (e) and (f).

Section 3 of D.C. Law 9-265 provided that the provisions of this act shall be retroactive to the effective date of the Retired Police Officer Redeployment Amendment Act of 1992, effective September 29, 1992 (D.C. Law 9-163; 39 DCR 5705).

Section 4(b) of D.C. Law 9-265 provided that the act shall expire on the 225th day of its having taken effect.

Section 2 of D.C. Law 10-5 added a new section to read as follows:

"(a)(1) Except for disability annuitants, police officers retired before April 1, 1993, from the Metropolitan Police force shall be eligible for rehire at the discretion of the Superintendent of the D.C. Public Schools as security personnel of the D.C. public schools without jeopardy to the retirement benefits of the police officers.

"(2) Service pursuant to this section shall not count as creditable service for the purpose of § 4-610.

"(3) A retired police officer who is rehired under this section shall be rehired only as a special police officer and shall be paid a salary of no more than that equal to the salary paid a class 1, step 1 officer within the Metropolitan Police Department and shall not be eligible for longevity pay, or overtime pay.

"(4) A retired police officer who is rehired pursuant to this section shall be vested with the powers of a special police officer with the uniform waivers pursuant to § 4-114 not including the authority to carry a firearm.

"(b) All costs associated with the hiring of retired police officers as school security guards shall be absorbed within the D.C. public schools' budget."

Section 5(b) of D.C. Law 10-5 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary addition of section, see § 2 of the Retired Police Officer Redeployment Emergency Amendment Act of 1992 (D.C. Act 9-201, April 24, 1992, 39 DCR 3215).

For temporary amendment of section, see

§ 2 of the Rehired Police Officer Annuitant Salary and Deployment Clarification Emergency Amendment Act of 1992 (D.C. Act 9-391, January 5, 1993, 40 DCR 1148). Section 3 of the act provided that its provisions shall be retroactive to the effective date of the Retired Police Officer Redeployment Amendment Act of 1992, effective September 29, 1992 (D.C. Law 9-163; 39 DCR 5705).

For temporary eligibility of police officers rehired from the Metropolitan Police Force to be rehired at the discretion of the Superintendent of the D.C. Public Schools as D.C. public school security personnel without jeopardy to their retirement benefits, see § 2 of the Retired Police Officer Public Schools Security Personnel Deployment Emergency Amendment Act of 1993 (D.C. Act 10-21, April 29, 1993, 40 DCR 2864).

Legislative history of Law 9-132. — Law 9-132, the "Retired Police Officer Redeployment Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-487. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-217 and transmitted to both Houses of Congress for its review. D.C. Law 9-132 became effective on July 22, 1992.

Legislative history of Law 9-163. — Law 9-163, the "Retired Police Officer Redeployment Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-498, which was referred to the Committee on Government Operations and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-258 and transmitted to both Houses of Congress for its review. D.C. Law 9-163 became effective on September 29, 1992.

Legislative history of Law 9-265. — Law 9-265, the "Retired Police Officer Annuitant Salary and Deployment Clarification Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-751. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively, and was vetoed by the Mayor on January 26, 1993. Council overrode the veto on February 2, 1993, and the Bill was assigned Act No. 9-413 and transmitted to both Houses of Congress for its review. D.C. Law 9-265 became effective on March 31, 1993.

Legislative history of Law 10-5. — Law 10-5, the "Retired Police Officer Public Schools Security Personnel Deployment Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-228. The Bill was adopted on first and second readings on April 7, 1993, and May 4, 1993, respectively. Signed by the Mayor on May 19, 1993, it was

assigned Act No. 10-26 and transmitted to both Houses of Congress for its review. D.C. Law 10-5 became effective on July 23, 1993.

Legislative history of Law 10-17. — Law 10-17, the "Rehired Police Annuity Salary and Deployment Clarification Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-74, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-49 and transmitted to both Houses of Congress for its review. D.C. Law 10-17 became effective on September 30, 1993.

Effective dates. — Section 3 of D.C. Law 10-17 provided that the provisions of the act shall be retroactive to the effective date of the Retired Police Officer Redeployment Amendment Act of 1992, effective September 29, 1992 (D.C. Law 9-163; 39 DCR 5705).

Expiration of Law 9-163. — Section 6(b) of D.C. Law 9-163 provided that, except for section 5, the act shall expire on October 1, 1997.

Mayor authorized to issue regulations. — Section 4 of D.C. Law 9-163 provided that the Mayor shall issue regulations necessary to carry out the provisions of this act.

Metal detectors authorized. — Section 4 of D.C. Law 10-5 provided that to the extent possible, the Board of Education shall install metal detectors in junior and senior high schools in accordance with the Board's commitment in the fiscal year 1992 budget process.

Editor's notes. — The current version of this section was enacted following the expiration of the section as previously enacted. The prior version of the section was first temporarily enacted by D.C. Act 8-7 (March 21, 1989, 36 DCR 2239); it was next temporarily enacted by D.C. Law 8-3, effective May 23, 1989 (36 DCR 2373), with an expiration on the 225th day of its having taken effect. The section was permanently enacted by D.C. Law 8-95, effective March 15, 1990 (37 DCR 786), with an expiration on April 1, 1992.

§ 4-619. Involuntary separation from service.

If any member is injured or contracts a disease during his first 5 years of service in his department which, in the judgment of the Board of Police and Fire Surgeons, disables him from performing further duty in his department, and if the Police and Firemen's Retirement and Relief Board finds that such injury or disease was not incurred in the performance of duty in his department, such member shall, upon the approval of such finding by the head of his department, and without regard for the provisions of any other law or regulation, be separated from the service. (Sept. 1, 1916, ch. 433, § 12(i); Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3; 1973 Ed., § 4-529.)

Cross references. — As to surgeons for police and firemen, see § 4-107.

Section references. — This section is referred to in §§ 1-624.1, 1-624.2, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Where it is the Police Department which initiates the proceeding to retire an officer against his will and for a disability which is alleged to be unrelated to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *Wingo v. Washington*, 395 F.2d 633 (D.C. Cir. 1968).

Where a police officer was discharged

for mental disability not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, the determination that the officer's disability was not related to his service was required to be supported by substantial and persuasive evidence and was required to be supported by findings of the Board setting forth material facts. *Wingo v. Washington*, 395 F.2d 633 (D.C. Cir. 1968).

Test for inability to perform service. — Where involuntary separation under this section is ordered by the Board for a disability unrelated to official service, the wording of § 4-607(2) requires that the applicable test is inability to perform any service at the officer's salary level that is "useful and efficient." *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 560 A.2d 492 (1989).

Findings required. — Where involuntary

separation under this section is ordered by the Board for a disability unrelated to official service, the evidence against the officer should clearly preponderate and be supported by findings setting forth material facts. *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 560 A.2d 492 (1989).

Cited in Hobson v. District of Columbia Police & Firemen's Retirement & Relief Bd., App. D.C., 452 A.2d 1182 (1982).

§ 4-620. Recovery from disability; restoration to earning capacity; suspension or reduction of annuity.

(a)(1) If any annuitant retired under § 4-615 or § 4-616, before reaching the age of 50, recovers from his disability or is restored to an earning capacity fairly comparable to the current rate of compensation of the position occupied at the time of retirement, payment of the annuity shall cease:

(A) Upon reemployment in the department from which he was retired;

(B) Forty-five days from the date of the medical examination showing such recovery;

(C) Forty-five days from the date of the determination that he is so restored; or

(D) In the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first became such a member after the end of the 90-day period beginning on November 17, 1979, upon a refusal by such annuitant to accept an offer of reemployment in the department from which he was retired at the same grade or rank as he held at the time of his retirement, whichever is earliest.

(2) Earning capacity shall be deemed restored if, in each of 2 succeeding calendar years in the case of an annuitant who was an officer or member of the United States Park Police force, United State Secret Service Uniformed Division, or the United States Secret Service Division, or in any calendar year in the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, the income of the annuitant from wages or self-employment or both shall be equal to at least 80% of the current rate of compensation of the position occupied immediately prior to retirement. Nothing in this section shall preclude such member from having an annuity reestablished if his disability recurs, or when his earning capacity is less than 80% of the rate of compensation of the position occupied immediately prior to retirement for any full year thereafter; provided, that whenever any member is reinstated with his respective department it shall be at the same grade or rank held by the member at the time of his retirement.

(b) When an annuitant recovers prior to age 50 from a disabling condition for which he has been retired, and applies for reinstatement in the department from which he was retired, he shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his separation from the service; provided, that such applicant meets the current entrance requirements of such department as to character.

(c)(1) If any annuitant who is retired under § 4-615 or § 4-616, who prior to such retirement was an officer or member of the Metropolitan Police force or

the Fire Department of the District of Columbia, and who first became such a member after the end of the 90-day period beginning on November 17, 1979, receives, directly or indirectly, income from wages or self-employment, or both, in any calendar year after the calendar year in which he retired:

(A) In an amount in excess of the difference between 70% of the current earnings limitation and the amount of annuity payable to such annuitant during such year under each such section prior to the reductions provided for in this subsection, then (except as provided in paragraph (4) of this subsection) the annuity of such annuitant shall be reduced by \$.50 for each \$1 of such income received during such year in excess of such difference; and

(B) In an amount in excess of the difference between the current earnings limitation and the amount of annuity payable to such annuitant during such year under each such section prior to the reductions provided for in this paragraph, then (except as provided in paragraph (4) of this subsection) the annuity of such annuitant shall be further reduced by \$.20 for each \$1 of such income received during such year in excess of such difference.

(2) For the purposes of paragraph (1) of this subsection, the term "current earnings limitation," with respect to an annuitant, means the greater of:

(A) The current annual salary for the position which such annuitant held immediately prior to the retirement of such annuitant; or

(B) The current entry level salary for active officers and members, divided by .7.

(3) The reductions provided for in paragraph (1) of this subsection shall be made as follows:

(A) Such reductions shall be prorated over a period of 12 consecutive months, with equal amounts withheld from each payment of annuity during such 12-month period; and

(B) The 12-month period during which such reduction is made shall begin as soon after the end of the calendar year involved as is administratively practicable (as determined in accordance with regulations which the Mayor of the District of Columbia shall promulgate).

(4) If the Mayor of the District of Columbia determines that the level of income of an annuitant whose annuity would otherwise be reduced in accordance with paragraph (1) of this subsection has decreased significantly (other than in accordance with normal income fluctuations for such annuitant) during the period in which such reduction would occur, the Mayor may authorize the withholding during such period, or any portion thereof, of such lesser amount than the amount prescribed in such paragraph as the Mayor considers appropriate or the Mayor may waive the requirements of paragraph (1) of this subsection if he finds that circumstances justify such waiver.

(5)(A) Any annuitant who is retired under § 4-615 or § 4-616 and who prior to such retirement was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia shall, at such times as the Mayor of the District of Columbia shall by regulation prescribe, submit to the Mayor a notarized statement containing such information as the Mayor shall by regulation require with respect to the income received by such annuitant from wages or self-employment, or both. After examining such state-

ment, the Mayor may require such annuitant to submit to the Mayor a further notarized statement containing such additional information with respect to the income received by such annuitant from wages or self-employment, or both, as the Mayor deems appropriate.

(B) Any annuitant described in subparagraph (A) of this paragraph who willfully furnishes materially false information with respect to his income in any statement required to be submitted under such subparagraph shall forfeit all rights to his disability annuity. Any such annuitant who refuses or otherwise willfully fails to timely submit such statement as required by this section, payment of the annuity of such annuitant shall cease and such annuitant shall not be eligible to receive such annuity or part thereof for the period beginning on the date after the final day for timely filing of such statement and ending on the date on which the Mayor receives such statement. Nothing in this subparagraph shall affect any rights to a survivor's annuity under § 4-622 based upon the service of such annuitant. (Sept. 1, 1916, ch. 433, § 12(j); Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(7); 1973 Ed., § 4-530; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 205(a).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-621, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Congressional intent. — It was not the intent of Congress to continue a pension where the pensioner has recovered from his disability. *Dougherty v. United States ex rel. Roberts*, 30 F.2d 471 (D.C. Cir. 1929).

Subsection (a) is constitutional. *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 488 A.2d 931 (1985).

Applicability of subsection (a). — Subsection (a) is applicable to those retired as of November 17, 1979, and to all future retirees. *McNeal v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 488 A.2d 931 (1985).

Interpretation of the statutory term "income" to mean "gross income" is reasonable. *Roberts v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 412 A.2d 47 (1980).

Burden on Board to demonstrate recovery from disability. — The Board must bear the burden of demonstrating with substantial evidence that a claimant has recovered from his disability. *Kea v. Police & Firemen's Re-*

tirement & Relief Bd., App. D.C., 429 A.2d 174 (1981).

Termination of disability annuity required. — When earned income reaches or exceeds the 80% limitation of paragraph (2) of subsection (a) of this section, the disability annuity must be terminated. *McMullen v. Police & Firefighter's Retirement & Relief Bd.*, App. D.C., 465 A.2d 364 (1983).

Statutory conditions for reinstatement of benefits. — Although subdivision (a)(1) sets forth two conditions upon which payment of a disability annuity shall cease, both of which operate before the annuitant reaches age 50, and although subdivision (a)(2) sets forth two corresponding conditions upon which the annuity, once terminated, can be reestablished, it is not implied in subsection (a), or the act as a whole, that a disability annuity is reinstated merely when the disqualified retiree reaches age 50. *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 626 A.2d 904 (1993).

Disability annuity rights forfeited by failure to report additional income. — Disability annuitant who withheld from report of income the fact that he had earned additional income from self-employment in sale of firearms forfeited rights to disability annuity pursuant to subsection (c)(5)(B) of this section despite annuitant's claim that he thought the income was not reportable to Board because it purportedly represented a capital loss for federal income tax purposes. *Simmons v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 478 A.2d 1093 (1984).

Board finding may be based on hearsay gathered in separate criminal investigation. — In hearing before Police and Firefighter's Retirement and Relief Board to determine if annuitant had been restored to earning capacity, hearsay information gathered in criminal investigation of annuitant concerning illegal sale of firearms, consisting of corroborating affidavits of disinterested witnesses who purchased firearms, was probative and could be relied on by Board to support finding that annuitant was self-employed in the sale of firearms. *Simmons v. Police & Firefighters' Retirement & Relief Bd.*, App. D.C., 478 A.2d 1093 (1984).

Reestablishment of payments to annuitant after temporary income ineligibility. — The Police and Firefighters Retirement and Relief Board should backdate annuity payments to an annuitant who had been temporarily above the statutory income limits to the date of eligibility for reestablishment rather than making the reestablished annuity effective only from the later date on which the Board reached its decision. *Ridge v. Police & Firefighters Retirement & Relief Bd.*, App. D.C., 511 A.2d 418 (1986).

The Police and Firefighters Retirement and Relief Board may offset against a reestablished annuity any payments received by the annuitant during what was later recognized as a period of temporary ineligibility. *Ridge v. Police & Firefighters Retirement & Relief Bd.*, App. D.C., 511 A.2d 418 (1986).

One who has had his annuity payments terminated may reapply when his earning capacity for 1 year becomes less than 80 percent of the rate of compensation of the position last occupied by the annuitant. *Roberts v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 412 A.2d 47 (1980).

Annuitant not entitled to reestablishment of benefits. — The Firefighters' Retirement Board reasonably construed subsection (a) of this section in concluding that petitioner's annuity would not be reinstated because he had not shown the required reduction of earning capacity or recurrence of his disability. *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 626 A.2d 904 (1993).

Cited in *Saunders v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 444 A.2d 16 (1982).

§ 4-621. Application of amendment to § 4-620.

The amendment made by Pub. L. 96-122, § 205(a)(2)(B), to § 4-620 shall apply with respect to income from wages or self-employment, or both, received directly or indirectly during calendar year 1979 or the calendar year after the year in which the member retires, whichever is later, and any calendar year thereafter. (1973 Ed., § 4-530.1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 205(c).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614,

4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

§ 4-622. Survivor benefits and annuities.

(a) If any member: (1) Dies in the performance of duty and the Mayor determines that: (A) The member's death was the sole and direct result of a personal injury sustained while performing such duty; (B) his death was not caused by his willful misconduct or by his intention to bring about his own death; and (C) intoxication of the member was not the proximate cause of his death; and (2) is survived by a survivor, parent, or sibling, a lump-sum payment of \$50,000 shall be made to his survivor if the survivor received more than one half of his support from such member, or if such member is not survived by any survivor (including a survivor who did not receive more than one half of his support from such member), to his parent or sibling if the parent or sibling received more than one half of his support from such member. If such member is survived by more than 1 survivor entitled to receive

such payment, each such survivor shall be entitled to receive an equal share of such payment; or if such member leaves no survivor and more than 1 parent or sibling who is entitled to receive such payment, each such parent or sibling shall be entitled to receive an equal share of such payment.

(b) In case of the death of any member before retirement, of any former member after retirement, or of any member entitled to receive an annuity under § 4-623 (regardless of whether such member is receiving such annuity at the time of death), leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of:

(1) Forty per centum of such member's average pay at the time of death, or 40%:

(A) Of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division; or

(B) Of the adjusted average pay of such former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia; or

(2) Forty per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death; provided, that such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(c) Each surviving child or student child of any member who dies before retirement, of any former member who dies after retirement, or of any member entitled to receive an annuity under § 4-623 (regardless of whether such member is receiving such annuity at the time of death), shall be entitled to receive an annuity equal to the smallest of:

(1) In the case of a member or former member who is survived by a wife or husband:

(A) Sixty per centum of:

(i) The member's average pay at the time of death; or

(ii) The basis upon which the former member's annuity at the time of death was computed in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the adjusted average pay of the former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, divided by the number of eligible children;

(B) \$1,548; or

(C) \$4,644 divided by the number of eligible children; and

(2) In the case of a member or former member who is not survived by a wife or husband:

(A) 75% of the member's average pay at the time of death, divided by the number of eligible children;

(B) In the case of a member who was an officer or member of the United States Park Police Force, the United States Secret Service Uniformed Division, or the United States Secret Service Division:

- (i) 75% of the basis upon which the former member's annuity at the time of death was computed, divided by the number of eligible children;
- (ii) \$1,860; or
- (iii) \$5,580 divided by the number of eligible children; or

(C) In the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, 75% of the adjusted average pay of the former member, divided by the number of eligible children.

(d) Each widow or widower who, on the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, was receiving relief or annuity computed in accordance with the provisions of this section shall be entitled to receive an annuity in the greater amount of: (1) \$3,144; or (2) thirty-five per centum of the basis upon which such relief or annuity was computed. Each child who, on said effective date, was receiving relief or annuity computed in accordance with the provisions of this section, shall be entitled to benefits computed in accordance with the provisions of subsection (c) of this section.

(e)(1) The annuity of the widow or widower under this section shall begin on the 1st day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage before age 60; provided, that any annuity terminated by remarriage may be restored if such remarriage is later terminated by death, annulment, or divorce.

(2) The annuity of any child under this section shall begin on the 1st day of the month in which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

- (A) The child becomes 18 years of age or, if over 18 years of age and incapable of self-support, becomes capable of self-support;
- (B) The child marries; or
- (C) The child dies.

(3)(A) The annuity of any student child under this section shall begin on the 1st day of the month in which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

- (i) The student child marries;
- (ii) The student child ceases to be a student;
- (iii) The student child reaches 22 years of age; or
- (iv) The student child dies.

(B) For the purposes of this paragraph, a student child whose 22nd birthday falls on or after July 1st shall not be considered to have reached 22 years of age until the June 30th following the student child's actual 22nd birthday.

(f) Any member retiring under § 4-615, § 4-616, or § 4-618, may at the time of such retirement, and any member entitled to receive an annuity under § 4-623 may at the time such annuity commences, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive

an increased annuity after such member's death; provided, that the person so designated be the surviving spouse or child of such member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such member is reduced. The annuity payable to the member making such election shall be reduced by 10% of the annuity computed as provided in § 4-615, § 4-616, or § 4-618. Such increase in annuity payable to the designee shall be reduced by 5% for each full 5 years the designee is younger than the member, but such total reduction shall not exceed 40%. The increase in annuity payable to the designee pursuant to this subsection shall be paid in addition to the annuity provided for such designee pursuant to subsection (b) or subsection (c) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to subsections (b), (c), and (e) of this section. If, at any time after such former member's election, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in § 4-615, § 4-616, § 4-618, or § 4-623, as the case may be. (Sept. 1, 1916, ch. 433, § 12(k); Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(8); Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 201(a)(4); 1973 Ed., § 4-531; Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(4), (5); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 206(a)(1), 207(a)(2), 209(b); June 22, 1990, D.C. Law 8-145, § 2, 37 DCR 2977.)

Cross references. — As to the salary, see § 4-406 et seq.

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-608, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-620, 4-623, 4-624, 4-625, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-634, 4-1104, and 6-1403.

Legislative history of Law 8-145. — Law 8-145, the "District of Columbia Retirement Reform Act of 1979 Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-487, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-201 and transmitted to both Houses of Congress for its review.

References in text. — The District of Columbia Police and Firemen's Salary Act salary schedule, referred to in subsection (b)(2) of this section, appears in § 4-406.

The effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, referred to in subsection (d) of this section, is prescribed by § 2 of the Act October 26, 1970, Pub. L. 91-509.

Mayor authorized to issue actuarial study. — Section 3 of D.C. Law 8-145 provided that to carry out the purposes of this act, the

Mayor shall, pursuant to § 1-722(d)(1), appoint an enrolled actuary to perform the required actuarial study. The cost of the actuarial study shall be borne by the District of Columbia Police Officers' and Fire Fighters' Retirement Fund. The actuarial study shall be completed by June 10, 1990.

Accrual of benefits under D.C. Law 8-145. — Section 4 of D.C. Law 8-145 provided that the increased benefits provided for in this act shall begin to accrue on April 10, 1990, but shall not be paid until the change in benefits becomes effective pursuant to § 1-722(d)(1).

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

Effect of military service. — Leave of absence without pay, given to a member of the Metropolitan Police when he entered the Marine Corps, temporarily excused him from performing acts of duty as a policeman, and did not terminate his membership in the force or constitute a retirement therefrom so as to preclude benefits to his widow and minor children. *Thompson v. Young*, 63 F. Supp. 890 (D.D.C. 1946).

Wife's pension entitlement following in-

valid divorce. — Where purported absolute divorce, obtained by a member of the Police Department was void for want of jurisdiction, a purported second marriage of the member was void ab initio, and his first wife whose marriage was terminated by his death was entitled to pension relief and death benefits payable to his widow. *Fleischhauer v. Hazen*, 80 F. Supp. 74 (D.D.C. 1948).

Benefits constituted taxable income. — Although disability retirement pay of a policeman would be exempt from income tax, the provision for the pension for widows under the Policemen and Firemen's Relief Fund does not make pension payments dependent on the husband's death and therefore a widow's pension benefits constituted taxable income. *Riley v. United States*, 156 F. Supp. 751 (D.D.C. 1958).

Cited in *Spencer v. Bullock*, 216 F.2d 54 (D.C. Cir. 1954); *Price v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 542 A.2d 1249 (1988).

§ 4-623. Deferred annuities; refund of deductions; redeposits and interest.

(a) Except as provided in subsection (b) of this section, any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 5 years of police or fire service and who is thereafter separated from his department, except for retirement under § 4-615, § 4-616, or § 4-618, shall be entitled to an annuity commencing on the 1st day of the month during which such member attains the age of 55 or on the 1st day of the 1st month beginning after such member's separation from his department, whichever month occurs later. Such annuity shall be computed at the rate of $2\frac{1}{2}\%$ of his average pay for each year of service up to 20 years of service and at the rate of 3% of his average pay for each year of service after 20 years of service, or, in the case of a member who first became such a member after the end of the 90-day period beginning on July 1, 1977, after 25 years of service, except that such annuity may not exceed 80% of the average pay of such member.

(b)(1) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 5 years of police or fire service and who is thereafter separated from his department (other than a member who retires under § 4-615, § 4-616, or § 4-618) may elect, at the time of his separation, to receive a refund of the amount of deductions made from his salary under §§ 4-607 to 4-630. Receipt of such refund by the member shall void all annuity rights under §§ 4-607 to 4-630.

(2)(A) Any member who, by electing to receive a refund under paragraph (1) of this subsection, loses annuity rights under §§ 4-607 to 4-630, may reestablish all such rights at any time prior to attaining the age of 55 by redepositing the amount of such refund plus interest computed in accordance with subsection (c) of this section.

(B) If any member who receives a refund under paragraph (1) of this subsection is subsequently reappointed to any department whose members come under §§ 4-607 to 4-630 and elects, at the time of such reappointment, to redeposit the amount refunded to him under paragraph (1) of this subsection plus interest computed in accordance with subsection (c) of this section, then credit shall be allowed under §§ 4-607 to 4-630 for such member's prior period of service. Such redeposit (and the required interest thereon) may, at the election of the member, be made in a lump sum or in not to exceed 60 monthly installments, except that if the member dies before depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(c) The interest which is required by subsection (b)(2)(A) and (B) of this section and by subsection (b)(2) of § 4-612 to be paid by a member who redeposits the amount of previously refunded deductions shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one eighth of 1%) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712) for the period beginning on the 1st day of the 1st month which begins after the end of the service with respect to which the redeposit is made and ending on the last day of the month which precedes the month during which he redeposits the refund if he makes a lump-sum payment or during which he makes the 1st monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one eighth of 1%) shall be used in determining the interest rate to be paid on redeposits under §§ 4-607 to 4-630;

(2) Interest shall be payable for the period beginning on the 1st day of the 1st month which begins after the end of the period of service with respect to which the redeposit is made and ending on the last day of the month which precedes the month during which he redeposits the refund;

(3) If a member elects to make his redeposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited. (1973 Ed., § 4-531.1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 207(a)(1).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-622, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Cited in *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 626 A. 2d 904 (1993).

§ 4-624. Cost-of-living adjustments of annuities.

(a) Each month the Mayor of the District of Columbia shall determine the per centum change in the price index. On the basis of this determination, and effective the 1st day of the 3rd month which begins after the price index shall have equaled the rise of at least 3% for 3 consecutive months over the price index for the base month, each annuity payable under §§ 4-607 to 4-630 which: (1) Is payable to a survivor of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division or the United States Secret Service Division; and (2) has a commencing date on or before such effective date shall be increased by 1% plus the per centum rise in the price index. For purposes of this subsection, the term "base month" means the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase under this subsection, except that, until the 1st cost-of-living annuity increase under this subsection, the base month shall be the last month which was the base month for purposes of § 4-622.

(b) With respect to any annuity payable under §§ 4-607 to 4-630 which is payable to a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, or to a survivor of any such member, the Mayor shall:

(1) On January 1st of each year, or within a reasonable time thereafter, determine the per centum change in the price index published for December of the preceding year over the price index published for June of the preceding year; and

(2) On July 1st of each year, or within a reasonable time thereafter, determine the per centum change in the price index published for June of such year over the price index published for December of the preceding year.

(c) If in any year the per centum change determined under either subsection (b)(1) or subsection (b)(2) of this section indicated a rise in the price index, then:

(1) In the case of an increase under subsection (b)(1) of this section:

(A) Each annuity described in subsection (b) of this section having a commencing date not later than March 1st of such year shall, effective such March 1st, be increased by the per centum change computed under such subsection, adjusted to the nearest one tenth of 1%; and

(B) Each annuity described in such subsection having a commencing date after such March 1st but before the effective date of the next increase in annuities under this subsection shall, effective such commencing date, be increased by such per centum change, adjusted to the nearest one tenth of 1%; or

(2) In the case of an increase under subsection (b)(2) of this section:

(A) Each annuity described in subsection (b) of this section having a commencing date not later than September 1st of such year shall, effective such September 1st, be increased by the per centum change computed under such subsection, adjusted to the nearest one tenth of 1%; and

(B) Each annuity described in such subsection having a commencing date after such September 1st but before the effective date of the next increase in annuities under this subsection shall, effective such commencing date, be increased by such per centum change, adjusted to the nearest one tenth of 1%.

(d) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installment shall after adjustment reflect an increase of at least \$1.

(e) For purposes of this section, the term "price index" means the Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics. (1973 Ed., § 4-531.2; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 209(a)(1).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-625, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Lump-sum payments to certain retired employees. — Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that, notwithstanding any other provision of law, in the case of each employee who retired from the Fire Department of the Dis-

trict of Columbia between November 24, 1984, and April 13, 1985 (both dates inclusive), and who on October 30, 1986 are receiving annuities based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than October 15, 1986, to each such employee a lump-sum payment equal to 3 percent of his or her annuity.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

§ 4-625. Application of § 4-624.

Subsections (b) and (c) of § 4-624 shall apply:

(1) To any increase after the effective date of § 4-624 in annuities payable under § 4-622, except that with respect to the 1st date after the effective date of § 4-624 on which the Mayor is to determine a per centum change for the purpose of such an increase, such per centum change shall be determined by computing the change in the price index published for the month immediately preceding such 1st date over the price index published for the last month which was the base month for purposes of § 4-622(7) before the repeal of such paragraph (7) by Pub. L. 96-122, § 209(b); and

(2) To any increase in each annuity payable under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, § 4-607 et seq.) having a commencing date after the effective date of § 4-624. (1973 Ed., § 4-531.3; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 209(a)(2).)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

References in text. — The "effective date of § 4-624," referred to in paragraph (2), is prescribed by § 209(d) of the Act of November 17, 1979, 93 Stat. 914, Pub. L. 96-122.

§ 4-626. Funeral expenses.

The Mayor is authorized to pay a sum not exceeding \$300 in any 1 case to defray the funeral expenses of any deceased member dying while in the service thereof. (Sept. 1, 1916, ch. 433, § 12(l); Aug. 21, 1957, 71 Stat. 397, Pub. L. 85-157, § 3; 1973 Ed., § 4-532.)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-627. Duties of Mayor; proceedings related thereto; disability retiree to report employment and undergo medical examination; overpayments.

(a) The Mayor shall consider all cases for the retirement of members and all applications for annuities under §§ 4-607 to 4-630. In each case of retirement of a member the Mayor shall certify in writing the physical condition of the member for whom retirement is sought. The Mayor shall give written notice to any member under consideration by him for retirement to appear before him and to give evidence under oath. The proceedings before the Mayor involving the retirement of any member, or any application for an annuity under §§ 4-607 to 4-630, shall be reduced to writing and shall show the date of appointment of such member, his age, his record in the service, and any other information which may be pertinent to the matter of such retirement or annuity. The Mayor is authorized to administer oaths and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Mayor may apply to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the Court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of § 11-944.

(b)(1) If a member is retired under § 4-615 or § 4-616 and is employed on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972, such member shall, in accordance with such regula-

tions as the Mayor shall prescribe, notify the Mayor of the employment; and the Mayor shall, as soon as practicable after the receipt of such notice, require each such member to undergo a medical examination (satisfactory to the Mayor) of the disability upon which the member's retirement under such section is based. The Mayor shall not require employment questionnaires under § 4-620(c)(5) or the medical examination of such member under paragraph (2) of this subsection after such member reaches the age of 50.

(2) The Mayor shall, by regulation, require any annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who retired before, on, or after November 17, 1979, under § 4-615 or § 4-616 to undergo, during each 12-month period following the effective date of this paragraph, at least 1 medical examination of the disability upon which the annuitant's retirement under § 4-615 or § 4-616 is based. No such annuitant shall be required under such regulations to undergo a medical examination during any such 12-month period during which the annuitant was required to undergo a medical examination under this section in connection with such annuitant's employment. Such annual examination shall be carried out by the Board of Police and Fire Surgeons or by a physician designated by the Board.

(3) Such regulations shall further provide for notification by the Board of Police and Fire Surgeons to each such annuitant as to the time and place for such examination and the consequences of failure to appear and submit to such examination.

(4) In any case in which the requirement to undergo a medical examination under §§ 4-607 to 4-630 would impose on an annuitant an undue hardship because of the physical or mental condition of such annuitant, the Mayor, by regulation, shall provide other means sufficient to determine the continuance of the disability on which such annuitant's retirement under § 4-615 or § 4-616 is based.

(5) Such regulations shall further provide that, in any case involving any such member so retired who refuses or otherwise fails to undergo any medical exam required by §§ 4-607 to 4-630, payment of the annuity to such member shall cease and such member shall not be eligible to receive such annuity or any part thereof for any period commencing on the day next following the day on which such member was required to undergo such examination, and ending on the date on which such member undergoes such examination. Nothing in this subsection shall be construed as affecting any rights to a survivor's annuity under § 4-622 based upon the service of such member.

(c) Except in a case of fraud against the District of Columbia, the Mayor may waive collection of any amount less than \$100 which was paid to an annuitant in excess of the amount to which such annuitant was entitled under §§ 4-607 to 4-630. (Sept. 16, 1916, ch. 433, § 12(m); Aug. 21, 1957, 71 Stat. 397, Pub. L. 85-157, § 3; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 202(a); 1973 Ed., § 4-533; Sept. 3, 1974, 88 Stat. 1041, Pub. L. 93-407, title I, § 123; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 205(b), 210.)

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

References in text. — Section 11-756, formerly appearing at the end of the last sentence of subsection (a) of this section, was repealed by the Act of December 23, 1963, 77 Stat. 620, Pub. L. 88-241, § 21(a), and was replaced by § 11-982. Title 11 was entirely amended by § 111 of Pub. L. 91-358, and the provisions of former § 11-982 are now covered in § 11-944.

"The effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972," referred to in the first sentence of subsection (b)(1) of this section, is prescribed by § 118 of the Act of August 29, 1972, Pub. L. 92-410.

The "effective date of this paragraph," referred to in subsection (b)(2), is prescribed by § 205(c) of the Act of November 17, 1979, 93 Stat. 866, Pub. L. 96-122.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Order establishing policies and procedures for administering § 4-627(b). — See Commissioner's Order No. 74-31, dated February 12, 1974, as amended by Mayor's Order No. 76-213, dated October 20, 1976.

Burden on Board to demonstrate recovery from disability. — The Board must bear the burden of demonstrating with substantial evidence that a claimant has recovered from his disability. *Kea v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 429 A.2d 174 (1981); *Saunders v. Police & Firemen's Retirement & Relief Bd.*, App. D.C., 444 A.2d 16 (1982).

Decisions of Police and Firemen's Retirement Board are not excepted from judicial review. *Johnson v. Board of Appeals & Review*, App. D.C., 282 A.2d 566 (1971), cert. denied, 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232 (1972).

Cited in United States ex rel. Rock, 6 F.2d 487, cert. denied, 269 U.S. 559, 46 S. Ct. 20, 70 L. Ed. 411 (1925); *Thompson v. Young*, 63 F. Supp. 890 (D.D.C. 1946); *Bullock v. Spencer*, 112 F. Supp. 147 (D.D.C. 1953); *Ridge v. Police & Firefighters Retirement & Relief Bd.*, App. D.C., 511 A.2d 418 (1986); *Ray v. District of Columbia*, App. D.C., 535 A.2d 868 (1987); *Zoglio v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, App. D.C., 626 A.2d 904 (1993).

§ 4-628. Police and Firemen's Retirement and Relief Board.

(a)(1) In order to carry out his responsibilities under §§ 4-607 to 4-630 with respect to retirement and disability determinations, and related functions, the Mayor of the District of Columbia shall establish a Police and Firemen's Retirement and Relief Board (hereinafter in this section referred to as the "Board"). The Board shall be composed of:

(A) Members and alternates appointed from among persons who are employees of the District of Columbia, 1 member and alternate each from the District of Columbia Office of Personnel, Corporation Counsel, Department of Human Services, Metropolitan Police force, and the Fire Department of the District of Columbia; and

(B) Two members, one of whom shall be a physician, appointed from among persons who are not officers or employees of the District of Columbia.

(2) The member, and alternate, appointed to the Board from among employees of the Department of Human Services shall both be medical officers. All appointments shall be made by the Mayor.

(b) The members appointed under subsection (a)(1)(B) of this section shall be appointed for 2 years, and shall be entitled to receive compensation for each day they are actually engaged in carrying out duties vested in the Board in the same manner as persons employed intermittently under § 3109 of Title 5 of the United States Code. Such members shall be appointed within 90 days after September 3, 1974.

(c) The Mayor shall establish rules for the Board to assure that the Board functions fairly and equitably. The Mayor shall provide the staff necessary for the Board.

(d) In addition to the members and alternates of the Board designated by subsection (a) of this section, in all cases of retirement, disability, or other relief involving a member of the United States Secret Service Uniformed Division or a member of the United States Secret Service Division, who contributes to the Policemen and Firemen's Relief Fund of the District of Columbia, a member and alternate of the United States Secret Service Uniformed Division or a member and alternate of the United States Secret Service Division, as designated by the Director, United States Secret Service Division, as appropriate shall sit as a member of the Police and Firemen's Retirement and Relief Board. (1973 Ed., § 4-533a; Sept. 3, 1974, 88 Stat. 1041, Pub. L. 93-407, title I, § 122; Jan. 3, 1975, 88 Stat. 2179, Pub. L. 93-635, § 19; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Cross references. — As to rules to carry out purposes of §§ 4-607 to 4-630, see § 4-630.

Section references. — This section is referred to in §§ 1-624.1, 1-732, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

References in text. — Office of Personnel was substituted for Personnel Office in subsection (a)(1)(A) of this section pursuant to Mayor's Order No. 79-84, dated May 10, 1979.

Department of Human Services was substituted for Department of Human Resources in subsection (a)(1)(A) and (a)(2) pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Order establishing Board. — See Organization Order No. 48, dated September 25, 1974.

Coverage Under Federal Employees' Retirement Act. — See note to § 4-602.

§ 4-629. Accrue ment and payment of annuities; persons who may accept payment; waiver; reduction.

(a) Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, accrues monthly (except that an annuity accrues over any portion of a month after the commencing date of such annuity but before the 1st day of the next month and is payable for such month in an amount

prorated in a manner to be determined by the Mayor) and is payable on the 1st business day of the month after it accrues.

(b) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the state of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the state of residence of the claimant, payment may be made to any person who, in the judgment of the Mayor, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(c) Any person entitled to an annuity under §§ 4-607 to 4-630 may decline to accept all or any part of such annuity by a waiver signed and filed with the Mayor. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect.

(d) In order to facilitate the settlement of the accounts of each person who, at the time of his death, was receiving or was entitled to receive an annuity under §§ 4-607 to 4-630, the Mayor shall pay all unpaid annuity due such person at the time of death to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

- (1) To the widow or widower of such person;
- (2) If there be no surviving spouse, to the child or children of such person, and descendants of deceased children, by representation;
- (3) If there be none of the above, to the parents of such person or the survivor of them; or
- (4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased person, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased person.

(e) Notwithstanding any other provision of law, the salary of any annuitant who first becomes entitled to an annuity under §§ 4-607 to 4-630, after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such annuitant's annuity under §§ 4-607 to 4-630 and compensation for such employment is equal to the salary otherwise payable for the position held by such annuitant. The provisions of this subsection shall not apply to an annuitant employed by the District of Columbia government under the Retired Police Officer Redeployment Amendment Act of 1992. (Sept. 1, 1916, ch. 433, § 12(n); Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3; 1973 Ed., § 4-534; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 211, 212, 214; May 23, 1989, D.C. Law 8-3, § 3, 36 DCR 2373; Mar. 15, 1990, D.C. Law 8-95, § 3, 37 DCR 786; July 22, 1992, D.C. Law 9-132, § 3, 39 DCR 4058; Sept. 29, 1992, D.C. Law 9-163, § 3, 39 DCR 5705.)

Section references. — This section is referred to in §§ 1-624.1, 1-711, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-630, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Effect of amendments. — D.C. Law 9-163, in (e), added the last sentence.

Temporary amendments of section. — Section 3 of D.C. Law 9-132 added the last sentence in (e).

Section 5(b) of D.C. Law 9-132 provided that the act shall expire on the 225th day of its having taken effect.

Section 3 of D.C. Law 10-5 amended subsection (e) to read as follows:

"(e) Notwithstanding any other provision of law, the salary of any annuitant who first becomes entitled to an annuity under §§ 4-607 to 4-630, after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such annuitant's annuity under §§ 4-607 to 4-630 and compensation for such employment is equal to the salary otherwise payable for the position held by such annuitant. The provisions of this subsection shall not apply to an annuitant employed by the District of Columbia government under the Retired Police Officer Redeployment Amendment Act of 1992. The provisions of this subsection shall not apply to an annuitant employed by the D.C. public schools under the Retired Police Officer Public Schools Security Personnel Deployment Temporary Amendment Act of 1993."

Section 4 of D.C. Law 10-5 provided that "to the extent possible, the Board of Education shall install metal detectors in junior and senior high schools in accordance with the Board's commitment in the fiscal year 1992 budget process."

Section 5(b) of D.C. Law 10-5 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Retired Police Officer Redeployment Emergency Amendment Act of 1992 (D.C. Act 9-201, April 24, 1992, 39 DCR 3215).

For temporary amendment of section, see § 3 of the Retired Police Officer Public Schools Security Personnel Deployment Emergency Amendment Act of 1993 (D.C. Act 10-21, April 29, 1993, 40 DCR 2864).

Legislative history of Law 8-3. — Law 8-3, the "Retired Police Officer Redeployment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-178. The Bill was adopted on first and second readings on Febru-

ary 28, 1989 and March 14, 1989, respectively. Signed by the Mayor on March 29, 1989, it was assigned Act No. 8-13 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-95. — Law 8-95, the "Retired Police Officer Redeployment Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-308, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-146 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-132. — See note to § 4-618.1.

Legislative history of Law 9-163. — See note to § 4-618.1.

Legislative history of Law 10-5. — See note to § 4-618.1.

Expiration of Law 8-95. — Section 4(b) of D.C. Law 8-95 provided that the act shall expire on April 1, 1992.

Expiration of Law 9-163. — Section 6(b) of D.C. Law 9-163 provided that, except for section 5, the act shall expire on October 1, 1997.

References in text. — The "Retired Police Officer Redeployment Amendment Act of 1992, referred to in (e), is D.C. Law 9-163, effective September 29, 1992.

Mayor authorized to issue regulations. — Section 4 of D.C. Law 9-163 provided that the Mayor shall issue regulations necessary to carry out the provisions of this act.

Metal detectors authorized. — Section 4 of D.C. 10-5 provided that to the extent possible, the Board of Education shall install metal detectors in junior and senior high schools in accordance with the Board's commitment in the fiscal year 1992 budget process.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Editor's notes. — In subsection (e), "November 17, 1979" is substituted for "July 1, 1977" to correct an error in regard to the date of enactment of the District of Columbia Retirement Reform Act (D.C. Code, § 1-701 et seq.) as stated in the organic act; the date of enactment of the District of Columbia Retirement Reform Act is November 17, 1979.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-630. Delegation of functions by Mayor; promulgation of rules and regulations by Mayor.

(a) The Mayor is hereby vested with full power and authority to delegate from time to time to his designated agent or agents any of the functions vested in him by §§ 4-607 to 4-630.

(b) The Mayor is authorized to promulgate such rules and regulations as he may deem necessary to carry out the purposes of §§ 4-607 to 4-630. (Sept. 1, 1916, ch. 433, § 12(o), (p); Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3; 1973 Ed., § 4-535.)

Cross references. — As to rules and regulations, see § 1-319. As to rules to assure that Police and Firemen's Retirement and Relief Board functions fairly and equitably, see § 4-628.

Section references. — This section is referred to in §§ 1-624.1, 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-631, 4-632, 4-633, 4-1104, and 6-1403.

Policemen and Firemen's Retirement and Disability Act. — Section 3(r) of Pub. L. 85-157 provides that this section may be cited as part of the Policemen and Firemen's Retirement and Disability Act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-631. Existing relief and rights preserved.

Nothing in §§ 4-607 to 4-630 shall be deemed to reduce the relief or retirement compensation to which any person is entitled on the effective date of such sections and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted. (Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 4; 1973 Ed., § 4-536.)

Section references. — This section is referred to in §§ 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-632, and 4-633.

References in text. — The "effective date" is prescribed by § 8 of the Act of August 21, 1957, 71 Stat. 399, Pub. L. 85-157.

§ 4-632. Appropriations authorized.

There are hereby authorized to be appropriated from revenues of the United States such sums as are necessary to reimburse the District of Columbia, on a monthly basis, for benefit payments made from revenues of the District of Columbia to or for federal employees and to or for the surviving children and spouse of such federal employees under the provisions of §§ 4-607 to 4-630, to the extent that such benefit payments exceed the deductions from the salaries of federal employees for credit to the revenues of the District of Columbia. For the purpose of this section:

(1) The term "benefit payments" includes relief, retirement compensation, pensions, and annuities and medical, surgical, hospital, and funeral expenses.

(2) The term "federal employees" means and includes such members of the United States Park Police force as are paid from funds of the United States, members of the United States Secret Service Uniformed Division and such members of the United States Secret Service Division as have or may hereafter become entitled to benefits under §§ 4-607 to 4-630. (Aug. 21, 1957, 71 Stat. 399, Pub. L. 85-157, § 6; 1973 Ed., § 4-537; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Cross references. — As to annual federal payment, see §§ 47-3402 and 47-3404.

Section references. — This section is referred to in §§ 4-314, 4-415, 4-603, 4-604,

4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, and 4-633.

§ 4-633. Eligibility for benefits under federal law.

Notwithstanding any other provision of law, no person entitled to receive any benefit under §§ 4-607 to 4-630 on account of death incurred, an injury received, or disease contracted, or an injury or disease aggravated, in the performance of duty shall be entitled, because of the same death, injury, disease, or aggravation, to benefits under subchapter I of Chapter 81 of Title 5, United States Code. (Aug. 21, 1957, 71 Stat. 400, Pub. L. 85-157, § 7; 1973 Ed., § 4-538.)

Section references. — This section is referred to in §§ 4-314, 4-415, 4-603, 4-604, 4-605, 4-607, 4-609, 4-610, 4-612, 4-614, 4-615, 4-618, 4-623, 4-624, 4-627, 4-628, 4-629, 4-630, 4-631, and 4-632.

References in text. — "Subchapter I of Chapter 81 of Title 5, United States Code" is codified at 5 U.S.C. § 8101 et seq.

Method of recovery not exclusive. — The Policemen and Firemen's Retirement and Disability Act does not provide a policeman an exclusive method of recovery for injury sustained, and he is not precluded from maintaining a suit against the United States under the

Federal Tort Claims Act. *Bradshaw v. United States*, 443 F.2d 759 (D.C. Cir. 1971).

Common-law tort liability not preserved.

— Exclusion of a member of the Metropolitan Police or Fire Department, who is pensioned or pensionable under §§ 4-607 to 4-630, from coverage of the Federal Employees Compensation Act does not preserve common-law tort liability of the District of Columbia to those injured on duty. *Anthony v. Norfleet*, 330 F. Supp. 1211 (D.D.C. 1971).

Cited in *Brown v. Jefferson*, App. D.C., 451 A.2d 74 (1982).

§ 4-634. Rights and relief of widows and children of deceased former members.

(a) Each widow or child who, on or after September 1, 1962, was receiving or is now receiving or shall hereafter be entitled to receive relief or annuity by reason of service in the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, of a deceased former officer or member who died in the service of any such organization prior to October 1, 1956, or who retired prior to such effective date, shall be entitled to benefits computed in accordance with the provisions of § 4-622.

(b) Nothing in this section shall be deemed to reduce the relief or retirement compensation any person receives, or is entitled to receive, on August 24, 1962. (Aug. 24, 1962, 76 Stat. 402, Pub. L. 87-601, §§ 1, 2; 1973 Ed., § 4-539; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

CHAPTER 7. AWARDS FOR MERITORIOUS SERVICE.

Sec.

4-701. Annual awards for meritorious service.

4-702. Committee to make awards.

Sec.

4-703. Preference in promotions.

4-704. Appropriation authorized.

§ 4-701. Annual awards for meritorious service.

For the official recognition of outstanding acts in the line of duty by the members of the Police, Fire, and Corrections Departments of the District of Columbia there shall be awarded annually 1 gold medal and 1 or more silver medals, appropriately inscribed, to those members of each Department who have by outstanding or conspicuous services earned such awards. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 1; July 24, 1956, 70 Stat. 627, ch. 685, § 1; 1973 Ed., § 4-701; June 29, 1984, D.C. Law 5-94, § 2(b), 31 DCR 2549.)

Cross references. — As to policemen's prohibition from accepting fees or presents in addition to salary, see § 4-125.

Section references. — This section is referred to in § 1-633.3.

Legislative history of Law 5-94. — Law 5-94, the "Correctional Officers Meritorious Service Recognition Amendment Act of 1984,"

was introduced in Council and assigned Bill No. 5-342, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-135 and transmitted to both Houses of Congress for its review.

§ 4-702. Committee to make awards.

The awards shall be made annually by a committee of 6 persons, consisting of the head of each Department and 3 civilians appointed by the Mayor of the District of Columbia, all to serve without compensation on such committee of award. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 2; 1973 Ed., § 4-702; June 29, 1984, D.C. Law 5-94, § 2(b), 31 DCR 2549.)

Legislative history of Law 5-94. — See note to § 4-701.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-703. Preference in promotions.

When promotions are being made in the Departments, the holders of such medals shall be preferred to other members of said Departments, other things being equal. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 3; 1973 Ed., § 4-703.)

§ 4-704. Appropriation authorized.

To provide for the cost of such medals there is hereby authorized to be appropriated annually such sum as the Mayor of the District of Columbia may deem necessary for the purpose. (Mar. 4, 1929, 45 Stat. 1557, ch. 696, § 4; 1973 Ed., § 4-704.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 8. TRIAL BOARDS.

Sec.

4-801. Attendance of witnesses — Issuance of subpoenas; fees.

4-802. Same — Wilful false swearing.

Sec.

4-803. Same — Neglect or refusal to obey subpoena.

4-804. Oath of members.

§ 4-801. Attendance of witnesses — Issuance of subpoenas; fees.

Any trial board of the Metropolitan Police force or the Fire Department of the District of Columbia shall have the power to issue subpoenas in the name of the Chief Judge of the Superior Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers or documents before said trial board; provided, that witnesses other than those employed by the District of Columbia subpoenaed to appear before said trial board shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia, but said fees need not be tendered said witnesses in advance of their appearing and testifying and/or producing books, records, papers or documents before said trial board. (May 11, 1892, 27 Stat. 29, ch. 65, § 1; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 1; Apr. 16, 1932, 47 Stat. 86, ch. 118, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(14)(A); 1973 Ed., § 4-601.)

Cross references. — As to similar powers of Mayor, see § 1-331. As to trial board for Metropolitan Police, see § 4-118.

Section references. — This section is referred to in §§ 1-331, 1-633.3, 4-802, 4-803, and 5-702.

§ 4-802. Same — Wilful false swearing.

Any wilful false swearing on the part of any witness before any trial board mentioned in § 4-801 as to any material fact shall be deemed perjury and shall be punished in the manner prescribed by law for such offense. (May 11, 1892, 27 Stat. 29, ch. 65, § 2; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 2; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 3; 1973 Ed., § 4-602.)

Section references. — This section is referred to in §§ 1-331, 1-633.3, and 5-702.

§ 4-803. Same — Neglect or refusal to obey subpoena.

If any witness, having been personally summoned, shall neglect or refuse to obey the subpoena issued in § 4-801, then in that event the chairman of the trial board may report that fact to the Superior Court of the District of Columbia or 1 of the judges thereof and said Court, or any judge thereof, is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that Court. (May 11, 1892, 27 Stat. 29, ch. 65, § 3; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 3; Apr. 16, 1932, 47 Stat.

87, ch. 118, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(14)(B); 1973 Ed., § 4-603.)

Section references. — This section is referred to in §§ 1-331, 1-633.3, and 5-702.

§ 4-804. Oath of members.

Each member of the trial boards shall take an oath to be administered by the Chief Clerk of the Police Department for the faithful and impartial performance of the duties of the office. (Apr. 16, 1932, 47 Stat. 87, ch. 118, § 4; 1973 Ed., § 4-604.)

Transfer of functions. — Reorganization Order No. 46 of the Board of Commissioners, dated June 26, 1953, established in the Metropolitan Police Department the Chief Clerk's section. The Order set forth the functions of the Chief Clerk's section and abolished the previously existing office. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. Reorganization Order No. 46 was replaced by Organization Order No. 153, dated November 10, 1966. Organization Order No. 8, dated

April 18, 1968, revoked Organization Order No. 153 to the extent the same was inconsistent with Organization Order No. 8. Commissioner's Order No. 69-614, dated November 13, 1969, provided in part that the Metropolitan Police Department shall continue in existence, headed by a Chief of Police who shall be responsible for the functions of said Department as previously established and constituted by Organization Order No. 153, as amended.

CHAPTER 9. CIVILIAN COMPLAINT REVIEW BOARD.

Sec.

4-901. Established; purpose; authority to act.

4-902. Recommendations.

4-903. Adjudication of complaints; rules and regulations; action by Chief of Police; complaints referred to United States Attorney; records.

4-904. Composition; term of office; quorum; removal for cause.

Sec.

4-905. Hearings.

4-906. Liability of Board members.

4-907. Executive Director; staff.

4-908. Funding.

4-909. Miscellaneous provisions.

4-910. Construction of chapter.

§ 4-901. Established; purpose; authority to act.

(a) There is established a District of Columbia Civilian Complaint Review Board (hereafter referred to as the "Board").

(b) The purpose of the Board shall be to make findings and recommendations with respect to citizen complaints concerning misconduct by officers of the Metropolitan Police Department and the Special Police employed by the District of Columbia government, when such misconduct is directed toward any person who is not a member of the Metropolitan Police Department or Special Police employed by the District of Columbia government.

(c) The Board shall have authority to act with respect to a citizen complaint alleging 1 or more of the following:

(1) Police harassment;

(2) Excessive use of force; or

(3) Use of language likely to demean the inherent dignity of any person to whom it was directed and to trigger disrespect for law-enforcement officers. (Mar. 5, 1981, D.C. Law 3-158, § 2, 27 DCR 5127.)

Section references. — This section is referred to in § 4-909.

Legislative history of Law 3-158. — Law 3-158, the "District of Columbia Civilian Complaint Review Board Act of 1980," was introduced in Council and assigned Bill No. 3-247, which was referred to the Committee on the Judiciary. The Bill was adopted on first and

second readings on October 14, 1980, and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-285 and transmitted to both Houses of Congress for its review.

Cited in *Cox v. District of Columbia*, 821 F. Supp. 1 (D.D.C. 1993).

§ 4-902. Recommendations.

(a) Except as provided in § 4-903(d), the Board shall find whether each allegation in a complaint filed against an officer should be sustained, dismissed, or found to evidence misconduct not directly related to the immediate complaint but within the authority of the Board. The Board shall be empowered to recommend personnel actions against officers involved in misconduct. Each finding shall be in writing.

(b) The Board shall recommend actions to be taken by the Chief of the Metropolitan Police Department.

(c) Except as hereafter provided, the Chief of the Metropolitan Police Department shall be the final authority in regard to findings about and discipline of officers of the Metropolitan Police Department and Special Police

officers employed by the District of Columbia government; provided, that, all rights provided by Chapter 6 of Title 1 as amended by this chapter, including the right to appeal before the Office of Employee Appeals and the right to a trial board hearing prior to dismissal are maintained. It is further provided that if the Chief of the Metropolitan Police Department determines to take any action other than that recommended by the Board, he shall indicate in writing his recommended action and the reasons therefor. The findings and recommendations of the Board, together with the recommendation by the Chief of Police, shall be transmitted to the Mayor of the District of Columbia who shall have 30 days from the date of the transmittal by the Chief of the Metropolitan Police Department to either uphold the recommendation of the Chief of the Metropolitan Police Department, impose the recommended actions of the Board, or order a compromise between these recommendations. If the Mayor fails to act within the prescribed 30 days, the recommended action of the Chief of the Metropolitan Police Department shall be deemed final. (Mar. 5, 1981, D.C. Law 3-158, § 3, 27 DCR 5127.)

Legislative history of Law 3-158. — See note to § 4-901.

§ 4-903. Adjudication of complaints; rules and regulations; action by Chief of Police; complaints referred to United States Attorney; records.

(a) Except as provided in subsection (d) of this section, all citizen complaints of alleged misconduct by officers shall be adjudicated by the Board.

(b) The Board shall be responsible for promulgating rules and procedures in accordance with subchapter I of Chapter 15 of Title 1 which ensure at a minimum:

(1) General public access to required forms and information concerning the submission, review, and disposition of complaints;

(2) The adjudication of complaints and forwarding of findings to the Chief of the Metropolitan Police Department in an expeditious manner;

(3) That complainants and accused officers have access to all Board proceedings and receive copies of the Board's investigative reports, findings, and recommendations simultaneously with their transmittal of any such materials to the Chief of the Metropolitan Police Department or the United States Attorney for the District of Columbia, as the case may be;

(4) That all Board meetings where testimony is presented or findings and recommendations are announced as open to the public;

(5) That adequate records for the conduct of hearings, presentation of evidence and witnesses, and deliberation of findings are developed;

(6) That adequate records are maintained on the receipt, review, and recommendations concerning alleged misconduct cases to allow regular monitoring of the nature and disposition of such cases; and

(7) That the grounds and procedures for good cause removal from membership on the Board are specified.

(c) Within 30 calendar days of the receipt of recommendations by the Board, the Chief of the Metropolitan Police Department shall: (1) Implement or otherwise issue a final order with respect to such recommendations; or (2) refer the matter to a police trial board. Failure to act within 30 days shall be deemed final action by the Chief of the Metropolitan Police Department ratifying the findings and recommendations of the Board, after which an aggrieved officer may exercise any right of review provided by law. The decision of the Chief of Metropolitan Police Department to refer the matter to a police trial board is final and nonreviewable, notwithstanding the provisions of subchapters VI and XVII of Chapter 6 of Title 1.

(d) When, in the determination of the Board, the record indicates any probability that the alleged misconduct was criminal in nature, the Board shall refer the complaint to the United States Attorney for the District of Columbia. Records of such transfer shall be maintained and the disposition of action determined and recorded. In cases where referral for possible criminal prosecution has occurred but the United States Attorney for the District of Columbia has elected not to prosecute, the Board may continue its adjudication of the noncriminal aspects of the complaint. If the United States Attorney for the District of Columbia elects to prosecute, the Board may resume its adjudication of the noncriminal aspects of the complaint following resolution of the criminal prosecution.

(e) The Board shall maintain an official record of all complaint proceedings which shall be available to the public. All or any part of Board records may be sealed to prevent public disclosure only for good cause shown by order of the Mayor or a court of competent jurisdiction. Such order shall be a public record and state reasons for the sealing. (Mar. 5, 1981, D.C. Law 3-158, § 4, 27 DCR 5127.)

Section references. — This section is referred to in § 4-902.

Legislative history of Law 3-158. — See note to § 4-901.

§ 4-904. Composition; term of office; quorum; removal for cause.

(a) The Board shall be composed of a Chairperson and 6 other members.

(a-1) An additional 14 members shall be appointed to the Board for a period not to exceed 3 years from March 13, 1993.

(b) The members shall be representative of the population of the District of Columbia and each shall be a resident of the District of Columbia.

(c) The Mayor shall appoint the Chairperson of the Board who shall be a resident of the District of Columbia and a member in good standing of the District of Columbia Bar.

(d) The recognized bargaining agent for the majority of uniformed Metropolitan Police Department employees shall appoint a representative and 2 alternates, and the Chief of the Metropolitan Police Department shall appoint a member of the Metropolitan Police Department and 2 alternates.

(e) The Board shall have 4 citizen members, 2 of whom shall be appointed by the Mayor and 2 appointed by the Council of the District of Columbia. No

citizen member appointed by the Mayor of the District of Columbia or the Council of the District of Columbia may be or become a member of the Metropolitan Police Department during such member's tenure on the Board.

(e-1) The additional 14 citizen members appointed under subsection (a-1) of this section, shall be appointed as follows: 7 shall be appointed by the Mayor and 7 shall be appointed by the Council of the District of Columbia for a term not to exceed 3 years from March 13, 1993. At least 1 citizen member appointed by the Mayor of the District of Columbia under subsection (a-1) of this section, and 1 citizen member appointed by the Council of the District of Columbia under subsection (a-1) of this section, must be a member in good standing of the District of Columbia Bar.

(f)(1) The term of the Board members appointed under subsection (a) of this section shall be for 3 years.

(2) Any member appointed to fill an unexpired term shall be appointed only for the unexpired portion of that term. For the purposes of this subsection, any member appointed to any term which exceeds 12 months shall be considered to have served a full term.

(g)(1) A majority of the 7 members of the Board appointed under subsection (a) of this section shall constitute a quorum for the purposes of administrative meetings.

(2) In exercising the authority conferred under this chapter, except in the case of rulemaking and policy development, the Board may act in 7 member panels. Each panel shall include 5 public members, 1 recognized bargaining unit member, and 1 Metropolitan Police Department member. The Chairperson and 2 Vice-Chairpersons shall each preside over a panel. Four members shall constitute a quorum for a panel. All acts and orders of a panel shall constitute an act or order of the Board.

(h) Any Board member may be removed for good cause shown by the Mayor with the concurrence of a majority vote of the Board or by a majority vote of the Board with the concurrence of the Mayor. In such event, a new Board member shall be appointed promptly in the same manner as the predecessor to fill the unexpired term. (Mar. 5, 1981, D.C. Law 3-158, § 5, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(a), 39 DCR 8075.)

Effect of amendments. — Section 2(a)(1) through (a)(4) of D.C. Law 9-179 added (a-1); in (d), inserted "and 2 alternates" twice; added (e-1); rewrote (f)(1); and in (f)(2), deleted the former second sentence. Section 2(a)(5) of D.C. Law 9-179, in (g)(1), inserted "appointed under subsection (a) of this section" and added "for the purposes of administrative meetings"; and added (g)(2).

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(a) of the Civilian Complaint Review Board Congressional Adjournment Emergency

Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(a) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — See note to § 4-901.

Legislative history of Law 9-179. — Law 9-179, the "Civilian Complaint Review Board Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-443, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on October 23,

1992, it was assigned Act No. 9-298 and transmitted to both Houses of Congress for its review. D.C. Law 9-179 became effective on March 13, 1993.

Section 3(b) of D.C. Law 9-179 provided that § 2(a)(5) of the act shall expire 3 years from the effective date of the Civilian Complaint Review Board Amendment Act of 1992.

Expiration of § 2(a)(5) of Law 9-179. —

§ 4-905. Hearings.

(a)(1) The Board shall convene and receive from the Executive Director complaints against a police officer involved in instances of alleged misconduct occurring within the District of Columbia. Every accused officer shall be given sufficient opportunity to respond to allegations in any complaint.

(2) The Executive Director of the Board shall at the direction of the Board, conduct an investigation of any complaint unless the Board determines on the basis of the face of the complaint that the complaint is frivolous or that the circumstances warrant an attempt to resolve the complaint through conciliation. Any recommended resolution entered into by the parties as a result of conciliation shall be approved by the Board.

(3) Where efforts to conciliate a complaint have been unsuccessful, a full investigation shall be conducted.

(4) Investigations shall include the interviewing of witnesses and police personnel. A statement by the accused officer in the course of the Board's investigation shall satisfy the requirement imposed by paragraph (1) of this subsection.

(5) The Board is authorized to compel prehearing statements from parties and from other witnesses as are necessary for the proper investigation of the complaint. These statements shall be given under oath.

(6) The results of any investigation by the Executive Director shall be written in an investigative report filed with the Board and served on every party before the Board's summary adjudication or hearing on the complaint.

(7) Upon its review of the investigative report in any complaint, a panel of the Board may either attempt to render findings and recommendations based upon the investigative record or, by a vote of a majority of the panel, may schedule the complaint for a hearing.

(b) The Board shall decide by a preponderance of the evidence whether to sustain or dismiss the complaint against the accused officer.

(c) Any testimony and other evidence, together with all papers and requests filed in the proceedings, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for decision. A tape recording of all testimony and exhibits shall be made available to any party to the proceedings upon request.

(d) Upon the reasonable request of any party to its proceedings or on its own motion the Board may direct by subpoena the attendance of any person before the Board to give testimony under oath or affirmation and to produce all relevant books, records, or other documents before the Board.

(e) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Board may by resolution refer the matter to the Superior Court of the District of Columbia which may by order require such person to appear

and give or produce testimony or books, papers, or other evidence bearing upon the matter under investigation. Any failure to obey such order may be punished by the Superior Court of the District of Columbia as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court.

(f) Once a hearing has been scheduled, every party, including the complainant or counsel, shall have the right to testify, call, and examine witnesses, to introduce other evidence, and to cross-examine adverse witnesses. Any oral and documentary evidence may be received, but the Chairperson of the Board shall exclude irrelevant, immaterial, or unduly repetitious evidence. Rulings of the Chairperson on all questions at issue in the taking of testimony or submitting of evidence shall be binding, but exceptions to rulings of the Chairperson shall be placed in the record. The Mayor is authorized to provide compensation for witnesses who are subpoenaed to testify before the Board, except those in the employ of the District of Columbia government or the United States government.

(g) Any willful false swearing as to a material fact, on the part of any party or witness either by a signed statement under oath, or by appearing before the Board, shall be deemed to be perjury and punished in the manner prescribed by law for such offenses. (Mar. 5, 1981, D.C. Law 3-158, § 6, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(b), 39 DCR 8075.)

Effect of amendments. — D.C. Law 9-179 rewrote (a); and in (g), substituted "as to a material fact, on the part of any party or witness either by a signed statement under oath, or by appearing before the Board, shall be deemed to be perjury and punished" for "on the part of any witness before the Board as to any material fact shall be deemed perjury and shall be punished".

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(b) of the Civilian Complaint Review Board Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(b) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — See note to § 4-901.

Legislative history of Law 9-179. — See note to § 4-904.

§ 4-906. Liability of Board members.

No member of the Board shall be liable to any person for damages or equitable relief by reason of any action taken or recommendation made by the member or by the Board, if the action taken was within the scope of the functions of the Board and if the Board member acted in the reasonable belief that such member's action was warranted by the facts known to such member after reasonable effort to obtain the facts of the matter. (Mar. 5, 1981, D.C. Law 3-158, § 7, 27 DCR 5127.)

Legislative history of Law 3-158. — See note to § 4-901.

§ 4-907. Executive Director; staff.

(a) The Board shall employ an Executive Director and such professional and investigative staff as is authorized through appropriations. The Executive Director and staff shall be considered employees of the District of Columbia government, hired in accordance with the provisions of Chapter 6 of Title 1 and be entitled to all rights enjoyed by District of Columbia employees.

(b) The Executive Director shall be a resident of the District of Columbia.

(c) The Executive Director shall have full responsibility for the supervision and direction of employees of the Civilian Complaint Review Board and shall ensure that all rules, regulations, records, and orders of the Board are maintained and properly executed.

(d) The Executive Director shall receive and administratively process all complaints authorized to be resolved under this chapter against an accused officer. The administrative processing of complaints by the Executive Director shall include conducting investigations, conciliation sessions, scheduling hearings, and preparing proposed findings and recommendations for the Board.

(e) The Executive Director shall file with the Mayor and the Council of the District of Columbia, once every 6 months, a report of all activities encompassed within the complaint processing and disposition procedures, together with such recommendations as the Board deems appropriate with respect to police practices, procedures, and other matters within the concern of the police complaint system. (Mar. 5, 1981, D.C. Law 3-158, § 8, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(c), 39 DCR 8075.)

Effect of amendments. — D.C. Law 9-179, in (d), added the second sentence.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(c) of the Civilian Complaint Review Board Congressional Adjournment Emergency

Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(c) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — See note to § 4-901.

Legislative history of Law 9-179. — See note to § 4-904.

§ 4-908. Funding.

(a) There are authorized such funds as may be necessary to support the Board, its staff, and support services.

(b) Board members who are not otherwise employed by the District of Columbia government shall be compensated pursuant to § 1-612.8.

(c) The Board is authorized to apply for and receive grants to fund its program activities in accordance with laws and regulations relating to grant management. (Mar. 5, 1981, D.C. Law 3-158, § 9, 27 DCR 5127; Mar. 13, 1993, D.C. Law 9-179, § 2(d), 39 DCR 8075.)

Effect of amendments. — D.C. Law 9-179 added (c).

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Civilian Complaint Review Board Emergency Amendment Act of 1992 (D.C. Act 9-274, July 23, 1992, 39 DCR 5846).

For temporary amendment of section, see § 2(d) of the Civilian Complaint Review Board Congressional Adjournment Emergency

Amendment Act of 1992 (D.C. Act 9-292, October 19, 1992, 39 DCR 7934).

For temporary amendment of section, see § 2(d) of the Civilian Complaint Review Board Second Congressional Adjournment Emergency Amendment Act of 1992 (D.C. Act 9-379, January 5, 1993, 40 DCR 640).

Legislative history of Law 3-158. — See note to § 4-901.

Legislative history of Law 9-179. — See note to § 4-904.

§ 4-909. Miscellaneous provisions.

(a) If any section or provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections or provisions of this chapter.

(b) The Board shall prepare an informational pamphlet on, and regularly publicize, the police complaint procedure established by this chapter.

(c) Anyone who wishes to file a complaint against a police officer must be provided with a complaint form. The Metropolitan Police Department and the Mayor are prohibited from maintaining any system other than that set forth in this chapter for the processing of § 4-901(c) civilian complaints against officers of the Metropolitan Police Department and Special Police employed by the District of Columbia where the alleged misconduct is directed towards any person not an officer of the Metropolitan Police Department or Special Police employed by the District of Columbia government. The Metropolitan Police Department shall establish an intensive human relations training program for police officers at every level of command.

(d) No complaint may be filed more than 6 months after a complainant, using reasonable diligence, became or should have become aware of the matter giving rise to the complaint.

(e) The remedies created by this chapter are cumulative of any others provided by statute or at common law.

(f) Reorganization Order No. 48 (except as it relates to a "Complaint Review Board" which is superseded by the Civilian Complaint Review Board created under this chapter) shall continue to apply to officers of the Metropolitan Police Department and the Special Police employed by the government of the District of Columbia hired after January 1, 1980, for the purposes of this chapter, notwithstanding the provisions of § 1-633.3.

(g) In any case where a complaint is adjudicated by the Board and referred by the Chief of Police to a police trial board, review by the police trial board as provided in Reorganization Order No. 48 shall be the exclusive administrative procedure available to an officer of the Metropolitan Police Department and Special Police employed by the District of Columbia government, notwithstanding the provisions of subchapters XVII and XVIII of Chapter 6 of Title 1. (Mar. 5, 1981, D.C. Law 3-158, § 10(a)-(e), (g), (h), 27 DCR 5127.)

Legislative history of Law 3-158. — See note to § 4-901.

§ 4-910. Construction of chapter.

The purposes of this chapter favor resolution of ambiguity by an administrator, hearing officer, or court toward the goal of promoting public participation and openness in the resolution of citizen complaints of misconduct by police officers. This chapter shall be deemed to supersede and repeal any and all provisions of law or administrative orders enacted or promulgated prior to October 1, 1981, which are inconsistent or conflict with any provision of this chapter. (Mar. 5, 1981, D.C. Law 3-158, § 11, 27 DCR 5127.)

Legislative history of Law 3-158. — See note to § 4-901.

Effective date. — Section 12 of D.C. Law 3-158 provided that: "This chapter shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in

the event of veto by the Mayor action by the Council of the District of Columbia to override the veto as provided in § 1-233(c)(1)): Provided, that this chapter shall not take effect prior to October 1, 1981, at which time complaints may be made to the Board."

CHAPTER 10. REGISTRATION OF STATE OFFICIALS ENTERING DISTRICT.

Sec.	civil fine; regulations; void and
4-1001. Definitions.	prohibited certificates.
4-1002. Registration; exception; certificates;	

§ 4-1001. Definitions.

For purposes of this chapter:

(1) "State" means the several states of the United States, Puerto Rico, the Virgin Islands, American Samoa, and Guam.

(1-a) "State agent" means any person compensated directly or indirectly by a state or who in any way assists in the administration of the enforcement of laws of a state relating to alcoholic beverages, tobacco, or tobacco products.

(2) "State official" means any agent, employee, or representative officially responsible for the administration and enforcement of laws of a state relating to alcoholic beverages, tobacco, and tobacco products. (1973 Ed., § 4-1101; Sept. 9, 1978, D.C. Law 2-102, § 2, 25 DCR 303; July 25, 1985, D.C. Law 6-12, § 2(a), 32 DCR 3232.)

Legislative history of Law 2-102. — Law 2-102, the "State Revenue Officers Registration Act of 1978," was introduced in Council and assigned Bill No. 2-45, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978, and May 16, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-212 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-12. — Law 6-12, the "State Revenue Officers Amendment Act of 1985," was introduced in Council and assigned Bill No. 6-86, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 30, 1985, and May 14, 1985, respectively. Signed by the Mayor on May 30, 1985, it was assigned Act No. 6-26 and transmitted to both Houses of Congress for its review.

§ 4-1002. Registration; exception; certificates; civil fine; regulations; void and prohibited certificates.

(a) Notwithstanding any other law or provision of law, including any executive agreements or understandings, any state official coming into the District of Columbia: (1) To enforce that state's laws relating to tobacco or tobacco products, including any law levying a tax on tobacco or tobacco products; or (2) to conduct an investigation or surveillance or cause to be surveilled activities done in the District of Columbia relating to a possible violation of the laws of that state, shall first register with the Chief of the Metropolitan Police Department of the District of Columbia (hereinafter referred to as the "Chief"). Such state official shall first register in person with the Chief 72 hours in advance of each such entry into the District of Columbia. Such state official shall, in addition, provide to the Chief a written statement setting forth the identity of such state official, the purpose of his intended entry into the District of Columbia, and the time(s) and place(s) at which such state official will be present in the District of Columbia for such purpose. Any person who

registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities. No state official or state agent shall be allowed to come into the District of Columbia to enforce that state's laws relating to alcoholic beverages, including any law levying a tax on alcoholic beverages, or to conduct an investigation or surveillance of a retail liquor establishment or cause to be surveilled activities done in the District of Columbia relating to a possible violation of that state's law relating to the importation of alcoholic beverages.

(b) This section shall not apply to any state law-enforcement officer who enters the District of Columbia lawfully in hot pursuit of a person suspected of having committed a crime, or to any state law-enforcement officer entering the District of Columbia solely for the purpose of conducting business with either the federal or the District of Columbia government.

(c) Any state official or state agent found to be in violation of this section shall be subject to a civil fine of up to \$300 for each violation.

(c-1) After July 25, 1985, certificates issued pursuant to subsection (a) of this section for investigating a retail liquor establishment shall become void and the Chief shall not grant certificates to permit investigations in the District of Columbia in order to enforce out-of-state liquor laws.

(d) Pursuant to subchapter I of Chapter 15 of Title 1, the Chief shall promulgate such regulations as are necessary to carry out the provisions of this chapter. (1973 Ed., § 4-1102; Sept. 9, 1978, D.C. Law 2-102, § 3, 25 DCR 303; Mar. 10, 1983, D.C. Law 4-198, § 2, 30 DCR 117; July 25, 1985, D.C. Law 6-12, § 2(b), (c), 32 DCR 3232.)

Legislative history of Law 2-102. — See note to § 4-1001.

Legislative history of Law 4-198. — Law 4-198, the "State Revenue Officers Registration Improvements Act of 1982," was introduced in Council and assigned Bill No. 4-493, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned

Act No. 4-282 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-12. — See note to § 4-1001.

Emergency act of 1984 held invalid. — The emergency act of 1984 (D.C. Act 5-218, 32 DCR 1) is invalid because circumstances did not warrant the Council's resort to its emergency legislative powers as a vehicle for amending this section. *Maryland v. Barry*, 604 F. Supp. 495 (D.D.C. 1985).

CHAPTER 11. MISCELLANEOUS PROVISIONS.

Subchapter I. General Provisions.

Sec.

- 4-1101. Memorial fountain to members of Metropolitan Police Department.
 4-1102. Service in Armed Forces — Seniority rights.
 4-1103. Same — Rank or grade preserved; restriction on compensation.
 4-1104. Basic workweek established; overtime; special assignments; court duty.
 4-1105. Payment of certain tuition expenses.
 4-1106. Protection of emergency 2-way radio communications — Definition.

Sec.

- 4-1107. Same — Unlawful acts.
 4-1108. Same — Penalties.
 4-1109. Same — Forfeiture of equipment.

Subchapter II. Law Enforcement Officers Memorial.

- 4-1121. Establishment.
 4-1122. Design and construction.
 4-1123. Expenses.

Subchapter I. General Provisions.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 8-2, the preexisting text of Chapter 11, to in-

clude §§ 4-1101 through 4-1109, has been designated as subchapter I of this chapter.

§ 4-1101. Memorial fountain to members of Metropolitan Police Department.

The Mayor of the District of Columbia is authorized and directed to accept and maintain for the District of Columbia the gift of a memorial fountain to the members of the Metropolitan Police Department; provided, that the design and model of the memorial fountain are approved by the Commission of Fine Arts, and thereafter erected at a location to be approved by the Mayor of the District of Columbia and the National Capital Planning Commission on land now owned by the District of Columbia, for the Municipal Center. (Apr. 22, 1940, 54 Stat. 157, ch. 136; 1973 Ed., § 4-901.)

Cross references. — As to Commission of Fine Arts, see 40 U.S.C. §§ 104 to 106.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 4-1102. Service in Armed Forces — Seniority rights.

(a) Any officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia, who served in the Armed Forces of the United States during the period beginning May 1, 1940, and ending December 31, 1946, and: (1) Whose name appeared during such service (as a result of a regular or reopened competitive examination for promotion) on any civil service register with respect to such force or Department for promotion to a higher rank or grade; or (2) whose name appeared on such a register as a result of a reopened examination taken subsequent to his release, shall, for the purpose of determining his seniority rights and service in such rank or grade, be held to have been promoted to such rank or grade as of the earliest date on which an eligible standing lower on the same promotion register received a promotion either permanently or temporarily to such rank or grade.

(b) No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall be entitled to the benefits of this section who has reenlisted after June 1, 1945, in the Regular Army or Air Force or after February 1, 1945, in the Regular Navy. (July 1, 1947, 61 Stat. 240, ch. 193, § 1; 1973 Ed., § 4-902.)

Section references. — This section is referred to in §§ 1-633.3 and 4-1103.

§ 4-1103. Same — Rank or grade preserved; restriction on compensation.

No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall, by reason of the enactment of § 4-1102, be:

(1) Reduced in rank or grade; or

(2) Entitled to any compensation for any period prior to July 1, 1947. (July 1, 1947, 61 Stat. 240, ch. 193, § 2; 1973 Ed., § 4-903.)

Section references. — This section is referred to in § 1-633.3.

§ 4-1104. Basic workweek established; overtime; special assignments; court duty.

(a) For purposes of this section, the following definitions apply, unless the context requires otherwise:

(1) "Authorizing official" means the Mayor of the District of Columbia in the cases of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Interior in the case of the United States Park Police force, and the Secretary of the Treasury in the case of the United States Secret Service Uniformed Division.

(2) "Administrative workweek" means a period of 7 consecutive calendar days.

(3) "Basic workweek" means a 40-hour workweek, excluding roll-call time, in the case of officers and members of the police forces specified in this section; a 40-hour workweek in the case of officers and members of the District of Columbia Fire Department other than those in the Firefighting Division; and an average workweek of 48 hours in the case of officers and members of the Firefighting Division of the District of Columbia Fire Department.

(4) "Basic workday" means an 8-hour day excluding roll-call time in the case of officers and members of the police forces specified in this section; an 8-hour day in the case of officers and members of the District of Columbia Fire Department other than those in the Firefighting Division; and an average 12-hour workday in the case of officers and members of the Firefighting Division.

(5)(A) "Off-duty days" means the nonwork days which, when combined with the basic workdays, make up the administrative workweek.

(B) "Off-duty time" means the time in any basic workday outside the regular tour of an officer or member's duty.

(6) "Roll-call time" means that time, not exceeding one-half hour each workday, which is in addition to each basic workday of the basic workweek for reading of rolls and other preparation for the daily tour of duty.

(7) "Rate of basic compensation" means the rate of compensation fixed by law for the position held by an officer or member exclusive of any deductions or additional compensation of any kind.

(8) "Premium pay" means compensation not considered as salary for the purpose of computing deductions for life insurance or for computing annuity payments under §§ 4-607 to 4-630.

(9) "Officer or member" means any employee in the Metropolitan Police force or the Fire Department of the District of Columbia, the United States Park Police force, or the United States Secret Service Uniformed Division whose compensation is fixed and adjusted in accordance with §§ 4-406 to 4-420.

(10) "Court duty" means attendance by an officer or member in his official capacity, excluding his appearance as a defendant, at court or at a quasi-judicial hearing.

(11) "Special event" or "special assignment" means any planned activity or function which the authorizing official designates in advance as such.

(b) The Mayor of the District of Columbia, the Secretary of the Interior, or the Secretary of the Treasury, as the case may be, is authorized and directed to establish a basic workweek of 40 hours to be scheduled on 5 days for the respective police forces referred to in this section; provided, that roll-call time shall be without compensation or credit to the time of the basic workweek.

(c) All officially ordered or approved hours of work (except roll-call time) performed by officers and members in excess of the basic workweek in any administrative workweek, shall be considered as overtime work and shall be compensated for as provided by this section.

(d)(1) Whenever the authorizing official designates an activity or function as a special event, or special assignment, all overtime work in connection with such special event, or special assignment, shall be compensated for by payment as follows:

(A) For each officer or member who receives compensation at a rate provided for in class 1 through class 4, in §§ 4-406 to 4-420, the overtime work shall be compensated for by payment at one and one-half times the basic hourly rate of such officer or member and all such compensation shall be considered premium pay.

(B) For each officer or member who receives compensation at a rate provided for classes 5 and above, in §§ 4-406 to 4-420, the overtime work shall be compensated for by payment at the basic hourly rate of such officer or member's basic compensation (except as otherwise limited by subsection (h)(1) and (2) of this section) and all such compensation shall be considered premium pay.

(2) An officer or member may elect to receive compensatory time off as provided in subsection (f) of this section in lieu of payment for overtime work as provided in this subsection.

(e) Each officer or member who on any off-duty time performs court duty (excluding the 1st appearance in court on each case), or who performs work, as ordered or approved, on any off-duty day shall be compensated in accordance with subsection (d) of this section.

(f)(1) Overtime work, other than that for which compensation by payment or time off is provided by subsections (d) and (e) of this section, shall be compensated for by compensatory time off at a rate of 1 hour of compensatory time for each hour of overtime work performed. Such compensatory time off shall be granted in accordance with the following provisions:

(A) The authorizing official, or such person as he may designate to act in his place, may, at the request of any officer or member, grant such officer or member compensatory time off from his scheduled tour of duty in lieu of payment for an equal amount of time spent for overtime work, including the 1st appearance for court duty in each case, if to grant such leave would not unreasonably diminish the number of officers or members available to maintain law, order, and public safety.

(B) Any officer or member who is eligible for compensatory time off and has made application for such compensatory time off, which application was denied, may within 30 days of such denial make application for compensatory pay at his basic hourly rate of basic compensation and all such compensation shall be considered premium pay.

(C) Such compensatory time off shall be used within such period of time as the authorizing official shall prescribe. If such officer or member fails to take such compensatory time off within the prescribed period, he shall thereby waive all right to such compensatory time off, unless his failure to take such compensatory time off is due to an official denial of his request for such compensatory time off.

(2) Such overtime work shall be credited for purposes of compensation in multiples of 1 hour, rounded to the nearest hour in case of fractions thereof. Thirty minutes or more of any such hour shall be credited as 1 hour.

(g)(1) Whenever any officer or member is authorized or directed to return to overtime duty at a time which is not an immediate continuation of his regular

tour of duty, such officer or member shall receive credit for not less than 2 hours of overtime work for purposes of compensation under this section.

(2) Overtime work resulting from the immediate continuation of an officer's or member's regular tour of duty which, excluding roll-call time, is 30 minutes or more in excess of the basic workday shall be credited for purposes of compensation under subsection (f) of this section.

(h)(1) No premium pay provided by this section shall be paid to, and no compensatory time off is authorized for, any officer or member whose rate of basic compensation equals or exceeds the minimum scheduled rate of basic compensation provided for service step 1 in the salary class applicable to the Fire Chief and Chief of Police in §§ 4-406 to 4-420.

(2) In the case of any officer or member whose rate of basic compensation is less than the minimum scheduled rate of basic compensation provided for service step 1 in the salary class applicable to the Fire Chief and Chief of Police in §§ 4-406 to 4-420, such premium pay may be paid only to the extent that such payment would not cause his aggregate rate of compensation to exceed such minimum scheduled rate with respect to any pay period.

(3) Each authorizing official is authorized to promulgate such regulations and issue such orders as are necessary to carry out the intent and purpose of this section, and to delegate to a designated agent or agents any of the functions vested in the authorizing official by this section. (Aug. 15, 1950, 64 Stat. 447, ch. 715, § 1; Mar. 27, 1951, 65 Stat. 27, ch. 20, § 1; June 20, 1953, 67 Stat. 76, ch. 146, title IV, § 403; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 1; Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 3; Oct. 21, 1965, 79 Stat. 1013, Pub. L. 89-282, § 1; Aug. 29, 1972, 86 Stat. 639, Pub. L. 92-410, title I, § 113; 1973 Ed., § 4-904; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Cross references. — As to duties and size of United States Secret Service Uniformed Division, see 3 U.S.C. §§ 202 and 203. As to establishment of workweek for Fire Department, see § 4-305.

Section references. — This section is referred to in §§ 1-633.3 and 4-402.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Captains and lieutenants are not exempt employees. — Captains and lieutenants in the Metropolitan Police force are not exempt from the Fair Labor Standard Act, 29 U.S.C. § 201 et seq., because they are guaranteed overtime on an hourly basis under this section, which indicates that they are not paid on a "salary basis." *Hilbert v. District of Columbia*, 784 F. Supp. 922 (D.D.C. 1992).

Cited in *Hilbert v. District of Columbia*, 788 F. Supp. 597 (D.D.C. 1992).

§ 4-1105. Payment of certain tuition expenses.

If an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Secret Service Uniformed Division, or the United States Park Police force engages in educational course work in police or fire science or administration, and, if he is eligible for payments or reimbursements under § 4109(a)(2)(C) of Title 5 of the United States Code for tuition expenses for such course work, the Mayor of the District of Columbia, the Secretary of the Treasury, and the Secretary of the Interior shall, in accordance with such § 4109(a)(2)(C), pay or reimburse each such officer and member under their jurisdiction for all his tuition expenses for such course work. (Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title I, § 117(a); 1973 Ed., § 4-910; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179.)

Section references. — This section is referred to in § 1-633.3.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 4-1106. Protection of emergency 2-way radio communications — Definition.

For the purpose of §§ 4-1106 to 4-1109, “emergency” means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting a communication referred to in § 4-1107 to be in imminent danger of death or serious bodily harm or in which property is in imminent danger of damage or destruction. (Apr. 11, 1986, D.C. Law 6-105, § 2, 33 DCR 1162.)

Section references. — This section is referred to in §§ 4-1108 and 4-1109.

Legislative history of Law 6-105. — Law 6-105, the “Protection of Emergency 2-Way Radio Communications Act of 1985,” was introduced in Council and assigned Bill No. 6-308, which was referred to the Committee on the

Judiciary. The Bill was adopted on first and second readings on January 14, 1986, and January 28, 1986, respectively. Approved without the signature of the Mayor on February 14, 1986, it was assigned Act No. 6-134 and transmitted to both Houses of Congress for its review.

§ 4-1107. Same — Unlawful acts.

It shall be unlawful for any person to do the following:

(1) Knowingly, intentionally, recklessly, or with culpable negligence interrupt, disrupt, impede, or otherwise interfere with the transmission of a 2-way radio communication, the purpose of which is to inform or to inquire about an emergency; or

(2) Knowingly, intentionally, recklessly, or with culpable negligence transmit false information about an emergency on any 2-way radio frequency. (Apr. 11, 1986, D.C. Law 6-105, § 3, 33 DCR 1162.)

Section references. — This section is referred to in §§ 4-1106, 4-1108, and 4-1109.

Legislative history of Law 6-105. — See note to § 4-1106.

§ 4-1108. Same — Penalties.

Any person who violates any provision of §§ 4-1106 to 4-1109, upon conviction, shall be subject to a fine of not more than \$500 or imprisonment of not more than 90 days, or both. (Apr. 11, 1986, D.C. Law 6-105, § 4, 33 DCR 1162.)

Section references. — This section is referred to in §§ 4-1106 and 4-1109.

Legislative history of Law 6-105. — See note to § 4-1106.

§ 4-1109. Same — Forfeiture of equipment.

(a) Any 2-way radio and related equipment used to commit a violation of §§ 4-1106 to 4-1109 shall be subject to forfeiture.

(b) Property subject to forfeiture under §§ 4-1106 to 4-1109 may be seized by law-enforcement officials, as designated by the Mayor, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law. (Apr. 11, 1986, D.C. Law 6-105, § 5, 33 DCR 1162.)

Section references. — This section is referred to in §§ 4-1106 and 4-1108.

Legislative history of Law 6-105. — See note to § 4-1106.

Subchapter II. Law Enforcement Officers Memorial.

§ 4-1121. Establishment.

The National Law Enforcement Officers Memorial Fund, Inc., is authorized to establish the National Law Enforcement Heroes Memorial on federal land in the District of Columbia or its environs to honor law enforcement officers who die in the line of duty. (May 23, 1989, D.C. Law 8-2, § 2, 36 DCR 2371.)

Legislative history of Law 8-2. — Law 8-2, the "Law Enforcement Officers Memorial Act of 1989," was introduced in Council and assigned Bill No. 8-91, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on February 28, 1989 and March 14, 1989, respectively. Signed by the Mayor on March 29, 1989, it was assigned Act No. 8-12 and transmitted to both Houses of Congress for its review.

§ 4-1122. Design and construction.

(a) The Mayor shall obtain and review the design and plans for the memorial and, after consultation with the Council and the Joint Committee on Judicial Administration of the District of Columbia Courts, transmit recommendations to the Secretary of the Interior, the Commission of Fine Arts, and the National Capital Planning Commission before approval of the design, plans, and construction of the memorial in accordance with the Joint Resolution Authorizing the Law Enforcement Officers Memorial Fund to establish a memorial in the District of Columbia or its environs, approved October 19, 1984 (98 Stat. 2712) ("Joint Resolution").

(b) Construction shall not commence until the Secretary of the Interior determines that sufficient funds are available for the completion of the memorial in accordance with the Joint Resolution.

(c) Construction shall commence no later than October 19, 1989, as provided in the Joint Resolution. (May 23, 1989, D.C. Law 8-2, § 3, 36 DCR 2371.)

Legislative history of Law 8-2. — See note to § 4-1121.

§ 4-1123. Expenses.

The District of Columbia shall not pay any expenses of the establishment or maintenance of the memorial. (May 23, 1989, D.C. Law 8-2, § 4, 36 DCR 2371.)

Legislative history of Law 8-2. — See note to § 4-1121.

TITLE 5. BUILDING RESTRICTIONS AND REGULATIONS.

Chapter

1. National Capital Housing Authority §§ 5-101 to 5-116.
2. Building Lines §§ 5-201 to 5-206.
3. Flood Hazards §§ 5-301 to 5-306.
4. Zoning and Height of Buildings §§ 5-401 to 5-434.
5. Fire Safety §§ 5-501 to 5-538.
6. Unsafe Structures §§ 5-601 to 5-608.
7. Insanitary Buildings §§ 5-701 to 5-719.
8. Housing Redevelopment §§ 5-801 to 5-840.
9. Community Development §§ 5-901 to 5-907.
10. Historic Landmark and Historic District
Protection §§ 5-1001 to 5-1023.
11. Preservation of Historic Places and Areas in the
Georgetown Area §§ 5-1101 to 5-1107.
12. Regulation of Foreign Missions §§ 5-1201 to 5-1215.
13. Construction Codes §§ 5-1301 to 5-1309.
14. Economic Development Zone Incentives §§ 5-1401 to 5-1406.

CHAPTER 1. NATIONAL CAPITAL HOUSING AUTHORITY.

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| <p>Sec.</p> <p>5-101. Declaration of policy; acquisition of property; improvements; sale, lease, or management; loans by Authority.</p> <p>5-102. National Capital Housing Authority — Agency of government; powers vested in Mayor.</p> <p>5-103. Same — Designation of agency; powers generally; approval of plans; condemnation proceedings.</p> <p>5-104. Same — Appropriations; power to borrow money; temporary architectural and engineering services.</p> <p>5-105. Same — Annual report — Proposals for operations of succeeding fiscal year.</p> | <p>Sec.</p> <p>5-106. Same — Same — Account of operations of preceding fiscal year.</p> <p>5-107. Publication of notice to owners of alley dwellings.</p> <p>5-108. Definitions.</p> <p>5-109. Severability.</p> <p>5-110. Short title.</p> <p>5-111. "Housing project" and "development" defined.</p> <p>5-112. Housing projects; powers of Authority.</p> <p>5-113. Authority considered a public housing agency.</p> <p>5-114. Housing projects; contributions by District.</p> <p>5-115. Loans by District authorized.</p> <p>5-116. Low-rent public housing projects.</p> |
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§ 5-101. Declaration of policy; acquisition of property; improvements; sale, lease, or management; loans by Authority.

(a) It is hereby declared to be a matter of legislative determination that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabit-

ants of the seat of the government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain in order to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of buildings in alleys, and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate, and sanitary habitations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings under the terms of this title, and to prevent an acute shortage of decent, safe, adequate, and sanitary dwellings for persons of low income, and to carry out the policy declared in the Act approved May 18, 1918, as amended, of caring for the alley population in the District of Columbia, and to that end it is necessary to enact the provisions hereinafter set forth.

(b) In order to remedy the conditions and evils hereinbefore recited and to carry out the policy hereinbefore declared, the Mayor of the District of Columbia is hereby authorized and empowered to acquire by purchase, gift, condemnation, or otherwise:

(1) Any land, building, or structures, or any interest therein, situated in or adjacent to any inhabited alley in the District of Columbia;

(2) Any land, buildings, or structures, or any interest therein, within any square containing an inhabited alley, the acquisition of which is reasonably necessary for utilization, by replatting, improvement, or otherwise, pursuant to the provisions of §§ 5-101 to 5-115, of any property acquired under paragraph (1) of this subsection; and

(3) Any other land, together with any structures that may be located thereon, in the District of Columbia that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the provisions of this title.

(c) The Authority is authorized and empowered to replat any land acquired under §§ 5-101 to 5-115; to pave or repave any street or alley thereon; to construct sewers and watermains thereon; to install streetlights thereon; to demolish, move, or alter any buildings or structures situated thereon and erect such buildings or structures thereon as deemed advisable; provided, however, that the same shall be done and performed in accordance with the laws and municipal regulations of the District of Columbia applicable thereto.

(d) The Authority is hereby authorized and empowered to lease, rent, maintain, equip, manage, exchange, sell, or convey any such lands, buildings, or structures acquired under this title for such amounts and upon such terms and conditions as it may determine; provided, that sales of real property shall be made at public sale to the highest responsible bidder on terms satisfactory to the Authority after advertising for 3 consecutive weeks in at least 1 daily newspaper of general circulation published in the District of Columbia; provided, however, that the Authority may, without advertising, sell such prop-

erty to a quasi-public institution or agency not organized or operated for private profit at not less than the cost of such property to the Authority, including improvements; and provided further, that if any such lands, buildings, or structures are required for the purposes of the United States or of the District of Columbia, they may be transferred thereto upon payment to the Authority of the reasonable value thereof.

(e) The Authority is authorized and empowered to aid in providing, equipping, managing, and maintaining houses and other buildings, improvements, and general community utilities on the property acquired under the provisions of this title, by loans, upon such terms and conditions as it may determine, to limited dividend corporations whose dividends do not exceed 6 per centum per annum, or to home owners to enable such corporations or home owners to acquire and develop sites on the property; provided, however, that no loan shall be made at a lower rate of interest than 5% per annum, and that all such loans shall be secured by reserving a 1st lien on the property involved for the benefit of the United States. (June 12, 1934, 48 Stat. 930, ch. 465, § 1; June 25, 1938, 52 Stat. 1186, ch. 691, § 1; 1973 Ed., § 5-103.)

Cross references. — As to powers and duties of Council and Mayor concerning building regulations and zoning, see §§ 1-322 and 5-412. As to recording of plats, see §§ 1-905 to 1-914. As to duty to make plats at request of President of United States, see § 1-912. As to definitions applicable in this chapter, see §§ 5-108 and 5-111. As to contributions by District to housing projects, see § 5-114. As to zoning and height of buildings, see § 5-401 et seq. As to unsafe structures, see § 5-601 et seq. As to insanitary buildings, see § 5-701 et seq. As to control over streets and sewers, and regulations for repair thereof, see § 7-101. As to rental of buildings in Municipal Center, see § 9-202. As to sale of public land, see § 9-401 et seq.

Section references. — This section is re-

ferred to in §§ 5-102 to 5-106, 5-108 to 5-110, 5-114, 5-116, and 5-816.

References in text. — "The Act approved May 18, 1918, as amended," referred to near the end of subsection (a) of this section, refers to the Act of May 16, 1918, 40 Stat. 550, ch. 74, which was a temporary act authorizing the President to provide housing for war needs.

Delegation of Authority to Implement the Provisions of the District of Columbia Alley Dwelling Act. — See Mayor's Order 88-30, December 15, 1987; Mayor's Order 88-161, December 15, 1987.

Transfer of functions. — The functions of the President under this section were transferred to the Mayor by § 5-102.

Cited in Coleman v. United States, App. D.C., 311 A.2d 496 (1973); Edwards v. District of Columbia, 628 F. Supp. 333 (D.D.C. 1985).

§ 5-102. National Capital Housing Authority — Agency of government; powers vested in Mayor.

(a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under §§ 5-101 to 5-115 shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in §§ 1-227(b) and 1-242(12).

(b) All functions, powers, and duties of the President under §§ 5-101 to 5-115 shall be vested in and exercised by the Mayor. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government. (1973 Ed., § 5-103a; Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 202.)

Cross references. — As to transfer of personnel, property, and funds, see § 1-211.

Section references. — This section is referred to in §§ 5-101, 5-103, 5-104, 5-106, 5-108, 5-109, 5-110, 5-114, 5-116, and 5-816.

Delegation of Authority to Implement the Provisions of the District of Columbia Alley Dwelling Act. — See Mayor's Order 88-30, December 15, 1987; Mayor's Order 88-161, December 15, 1987.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Definitions applicable. — The definitions in § 1-202 apply to this section.

Authority is not suable entity since this section does not explicitly or implicitly establish the Authority as *sui juris*, in contrast with the provision in § 5-803(b) giving the Redevelopment Land Agency the power to sue and be sued. *Braxton v. National Capital Hous. Auth.*, App. D.C., 396 A.2d 215 (1978).

§ 5-103. Same — Designation of agency; powers generally; approval of plans; condemnation proceedings.

(a) The Mayor of the District of Columbia may designate, for the purpose of carrying out the provisions of §§ 5-101 to 5-115, such official or agency of the government of the United States or of the District of Columbia (hereinafter referred to as "the Authority") as in his judgment is deemed necessary or advantageous, and the Authority shall have or obtain all powers necessary or appropriate therefor, including the employment of necessary personal services; but:

(1) All plans for replatting and/or method of condemnation under the provisions of §§ 5-101 to 5-115 shall be submitted to and receive the written approval of the National Capital Planning Commission and of the Mayor of the District of Columbia; provided, however, that:

(A) Failure of the National Capital Planning Commission or of the Mayor of the District of Columbia to formally approve or disapprove in writing within 60 days after a plan has been submitted shall be equivalent to a formal approval; and

(B) Disapproval shall be accompanied by a written statement giving all the reasons for disapproval; and

(2) Any plan which shall involve action by any department, bureau, or agency of the United States or of the District of Columbia shall be made after consultation with such department, bureau, or agency.

(b) In the event condemnation proceedings are required to carry out the provisions of §§ 5-101 to 5-115, the same shall be conducted in accordance with the provisions of Chapter 13 of Title 16.

(c) If the Authority determines in the case of any alley that it will be more advantageous to proceed in accordance with §§ 7-421 and 7-422, the Mayor of the District of Columbia shall be notified of such determination and proceedings shall then be had as provided in such sections for alleys and minor streets, except that if the total amount of damages awarded by the jury and the cost and expenses of the proceedings be in excess of the total amount of the

assessment for benefits, such excess shall be borne and paid by the Authority. (June 12, 1934, 48 Stat. 931, ch. 465, § 2; July 29, 1970, 84 Stat. 587, Pub. L. 91-358, title I, § 166(a); 1973 Ed., § 5-104; May 10, 1989, D.C. Law 7-231, § 15, 36 DCR 492.)

Cross references. — As to condemnation proceedings, see § 16-1301 et seq.

Section references. — This section is referred to in §§ 5-101, 5-102, 5-104, 5-106, 5-108, 5-109, 5-110, 5-114, 5-116, and 5-816.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Delegation of Authority to Implement the Provisions of the District of Columbia Alley Dwelling Act. — See Mayor's Order 88-30, December 15, 1987; Mayor's Order 88-161, December 15, 1987.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in the introductory language in paragraph (1) of subsection (a) of this section and in subparagraph (A) of that paragraph in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

The functions of the National Capital Housing Authority were transferred to the Department of Public and Assisted Housing by Reorganization Plan No. 1 of 1987, effective December 15, 1987.

Injunction will issue to prohibit improper use of alley. — Where a party does not establish a prescriptive easement to use an alley owned by another, the court will issue an injunction prohibiting such use. *Zlotnick v. Jack I. Benders & Sons*, 285 F. Supp. 548 (D.D.C. 1968), aff'd as modified, 422 F.2d 716 (D.C. Cir. 1970).

But decree not binding upon District. — Where the District is not a party to an action to determine the rights of the grantor and grantees of a quitclaim deed to an alley, the final decree will not be binding upon the District. *Zlotnick v. Jack I. Benders & Sons*, 285 F. Supp. 548 (D.D.C. 1968), aff'd as modified, 422 F.2d 716 (D.C. Cir. 1970).

§ 5-104. Same — Appropriations; power to borrow money; temporary architectural and engineering services.

(a) The Mayor is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, "National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933-1935," symbol 03/5666, not to exceed \$500,000 of any amount thereof dedicated for low-cost housing and slum-clearance projects in the District of Columbia, to be set

aside in the Treasury and be known as "Conversion of Inhabited Alleys Fund" (hereinafter referred to as the "Fund").

(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of §§ 5-101 to 5-115, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the Fund and shall be available for the purposes of §§ 5-101 to 5-115. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the Treasury of the United States not to exceed \$1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the 4 succeeding fiscal years, upon such terms and conditions as the Mayor may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the Treasury; provided, that the Authority shall be obligated for the payment of interest at the going federal rate as defined in the United States Housing Act of 1937.

(c) The Fund shall be available annually in such amount as may be specified in the annual appropriation acts.

(d) In carrying out the provisions of §§ 5-101 to 5-115, the Authority is hereby authorized and empowered:

(1) To purchase books of reference, directories, and periodicals that are necessary in connection with its work; and

(2) To secure architectural and engineering services on specific projects; provided, that this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis. (June 12, 1934, 48 Stat. 931, ch. 465, § 3; June 25, 1938, 52 Stat. 1187, 1188, ch. 691, §§ 2-4; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 1; 1973 Ed., § 5-105; Mar. 3, 1979, D.C. Law 2-139, § 3205(xx), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1, 5-101, 5-102, 5-103, 5-106, 5-108, 5-109, 5-110, 5-114, 5-116, and 5-816.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and trans-

mitted to both Houses of Congress for its review.

References in text. — The United States Housing Act of 1937, referred to in the second sentence in subsection (b) of this section, is the Act of September 1, 1937, ch. 896.

Transfer of functions. — The functions of the President under this section were transferred to the Mayor by § 5-102.

National Industrial Recovery Act unconstitutional. — Title I of the National Industrial Recovery Act, referred to in subsection (a) of this section, is unconstitutional. *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 55 S. Ct. 241, 79 L. Ed. 446 (1935).

§ 5-105. Same — Annual report — Proposals for operations of succeeding fiscal year.

The objects set forth in § 5-101 shall be accomplished as rapidly as feasible and to this end the Authority shall, in each annual report, set forth what it proposes to do during the next succeeding fiscal year. (June 12, 1934, 48 Stat. 932, ch. 465, § 4; June 8, 1944, 58 Stat. 271, ch. 238, § 1; July 5, 1945, 59 Stat. 410, ch. 268, § 1; June 26, 1946, 60 Stat. 319, ch. 503, § 1; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18(a); Aug. 16, 1954, 68 Stat. 731, ch. 739, § 2; 1973 Ed., § 5-106.)

Section references. — This section is referred to in §§ 5-101 to 5-104, 5-106, 5-108 to 5-110, 5-114, 5-116, and 5-816.

§ 5-106. Same — Same — Account of operations of preceding fiscal year.

(a) The Authority shall make a report to the Mayor of the District of Columbia, which he shall transmit to Congress at the beginning of each regular session, giving a full and detailed account of all operations under the provisions of §§ 5-101 to 5-115 for the preceding fiscal year, including an itemization of all properties purchased during such fiscal year, setting forth the assessed value of such properties, together with the purchase price therefor.

(b) Upon completion of the work contemplated by §§ 5-101 to 5-115, the Mayor of the District of Columbia shall submit a complete report to Congress giving a full and detailed account of all operations for the entire period of operation. If such work is not completed by July 1, 1944, the Mayor of the District of Columbia shall, on July 1, 1944, or at the opening of the next regular session of Congress after such date, make a report to Congress covering the operations under §§ 5-101 to 5-115, for the entire period to July 1, 1944, including a statement of what further work remains to be done, and recommendation for further legislation if in his opinion such legislation is necessary.

(c) It is hereby declared to be the purpose and intent of Congress that the objects set forth in § 5-101 shall be accomplished, if possible, on or before July 1, 1944, except that loans made under §§ 5-101 to 5-115 may run for periods extending beyond such time. (June 12, 1934, 48 Stat. 932, ch. 465, § 5; Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 2; 1973 Ed., § 5-107.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-108, 5-109, 5-110, 5-114, 5-116, and 5-816.

Transfer of functions. — The functions of the President under this section were transferred to the Mayor by § 5-102.

§ 5-107. Publication of notice to owners of alley dwellings.

There shall be published 3 times each year during the month of January in a newspaper of general circulation published in the District of Columbia a notice to owners and tenants of alley dwellings and of other property in squares containing inhabited alleys that alley dwellings in such squares may be demolished, removed, or vacated, and that the squares may be replatted on or before July 1, 1955. (June 12, 1934, 48 Stat. 933, ch. 465, § 6; June 8, 1944, 58 Stat. 271, ch. 238, § 2; July 5, 1945, 59 Stat. 410, ch. 268, § 2; June 26, 1946, 60 Stat. 319, ch. 503, § 2; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18(b); 1973 Ed., § 5-108.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-108, 5-109, 5-110, 5-114, 5-116, and 5-816.

§ 5-108. Definitions.

As used in §§ 5-101 to 5-115:

(1) The term "alley" means:

(A) Any court, thoroughfare, or passage, private or public, less than 30 feet wide at any point; and

(B) Any court, thoroughfare, or passage, private or public, 30 feet or more in width, that does not open directly with a width of at least 30 feet upon a public street that is at least 40 feet wide from building line to building line.

(2) The term "inhabited alley" means an alley in or appurtenant to which there are 1 or more alley dwellings.

(3) The term "alley dwelling" means any dwelling fronting upon or having its principal means of ingress from an alley. This definition does not include an accessory building, such as a garage, with living rooms for servants or other employees, if the principal entrance to the living rooms of the accessory building is from the street property to which it is accessory.

(4) The term "dwelling" means any building or structure used or designed to be used in whole or in part as a living or a sleeping place by 1 or more human beings.

(5) The term "person" includes any individual, partnership, corporation, or association. (June 12, 1934, 48 Stat. 933, ch. 465, § 7; 1973 Ed., § 5-109.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-109, 5-110, 5-114, 5-116, and 5-816.

§ 5-109. Severability.

If any provision of §§ 5-101 to 5-115 or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the said sections and the application thereof to other persons and circumstances shall not be affected thereby. (June 12, 1934, 48 Stat. 933, ch. 465, § 8; 1973 Ed., § 5-110.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-108, 5-110, 5-114, 5-116, and 5-816.

§ 5-110. Short title.

Sections 5-101 to 5-115 may be cited as the "District of Columbia Alley Dwelling Act." (June 12, 1934, 48 Stat. 933, ch. 465, § 10; 1973 Ed., § 5-111.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-108, 5-109, 5-114, 5-116, and 5-816.

§ 5-111. "Housing project" and "development" defined.

As used in §§ 5-111 to 5-115:

(1) The term "housing project" shall mean any low-rent housing (as defined in the United States Housing Act of 1937), the development or administration of which is assisted by the United States Department of Housing and Urban Development.

(2) The term "development" shall mean any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a housing project, but not beyond the point of physical completion. (June 12, 1934, ch. 465, title II, § 201; June 25, 1938, 52 Stat. 1188, ch. 691, § 5; 1973 Ed., § 5-112.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-108, 5-109, 5-110, 5-113, 5-114, 5-116, and 5-816.

References in text. — The United States Housing Act of 1937, referred to in paragraph (1) of this section, is the Act of September 1, 1937, ch. 896.

§ 5-112. Housing projects; powers of Authority.

In addition to its other powers, the Authority shall have the power to acquire sites for and to prepare, carry out, acquire, lease, and operate housing projects, as defined in § 5-111, and to construct or provide for the construction, reconstruction, improvement, alteration, or repair of any such housing project, or any part thereof, in the District of Columbia. (June 12, 1934, ch. 465, title II, § 202; June 25, 1938, 52 Stat. 1188, ch. 691, § 5; 1973 Ed., § 5-113.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-108, 5-109, 5-110, 5-111, 5-113, 5-114, and 5-116.

Report on collections of rent. — H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Director of the Department of Housing and Community Development shall report every 6 months to the Council of the District of Columbia on collections of rent from public housing stock.

Establishment of District of Columbia Public Housing Advisory Board. — See Mayor's Order 89-202, September 8, 1989.

Chapter is valid and is not unconstitutional because it allegedly authorizes condemnation of property for other than public uses. *Keyes v. United States*, 119 F.2d 444 (D.C. Cir.), cert. denied, 314 U.S. 636, 62 S. Ct. 70, 86 L. Ed. 510 (1941).

Authority can use a minimum income requirement and is not required to consider

each case on an individual basis; such a policy is not an application of an unconstitutional conclusive presumption. *McQueen v. National Capital Hous. Auth.*, App. D.C., 366 A.2d 786 (1976).

Authority has the power to condemn sites for low-cost housing projects in addition to and wholly independent of its powers under § 5-103. *Keyes v. United States*, 119 F.2d 444 (D.C. Cir.), cert. denied, 314 U.S. 636, 62 S. Ct. 70, 86 L. Ed. 510 (1941).

Under this section, the acquired property need not itself be unsafe or unsanitary and is not required to be acquired only in connection with a project involving the demolition of unsafe or unsanitary dwellings. *Keyes v. United States*, 119 F.2d 444 (D.C. Cir.), cert. denied, 314 U.S. 636, 62 S. Ct. 70, 86 L. Ed. 510 (1941).

Complaint lies for failure to maintain facilities owned by United States. — A complaint for failure to properly maintain and repair public housing facilities, owned by the United States, states a claim for which relief can be granted. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045 (D.C. Cir. 1971).

And sovereign immunity no preclusion to suit. — The fact that legal title to public housing projects operated by the Authority is in the United States does not, under the doctrine of sovereign immunity, preclude a suit for failure to properly maintain and repair such facilities. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045 (D.C. Cir. 1971).

But action cannot be maintained against District officials who enforce the housing regulations. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045 (D.C. Cir. 1971).

§ 5-113. Authority considered a public housing agency.

For the purposes of §§ 5-111 to 5-115, the Authority shall be considered a public housing agency within the meaning of, and to carry out the purposes of, the United States Housing Act of 1937; and as such, the Authority is empowered to borrow money or accept contributions, grants or other financial assistance from the United States Housing Authority for or in aid of any housing project in the District of Columbia, in accordance with the United States Housing Act of 1937 to take over or lease or manage any such housing project or undertaking constructed, owned, or operated by the United States Department of Housing and Urban Development and to those ends to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable; provided, that the tax exemption of the property of the Authority shall be deemed a contribution by the District of Columbia in accordance with the local contributions requirements of § 1437 et seq. of Title 42, United States Code. It is the purpose and intent of §§ 5-111 to 5-115 to authorize the Authority to do any and all things necessary to secure the financial aid of the United States Department of Housing and Urban Development in the undertaking, construction, maintenance, or operation in the District of Columbia of any housing project by the Authority. (June 12, 1934, ch. 465, title II, § 203; June 25, 1938, 52 Stat. 1188, ch. 691, § 5; 1973 Ed., § 5-114.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104, 5-106, 5-108, 5-109, 5-110, 5-111, 5-114, 5-116, and 5-816.

References in text. — The United States Housing Act of 1937, referred to twice in the first sentence, is the Act of September 1, 1937, ch. 896.

The reference to § 1437 et seq. of Title 42 of the United States Code has been substituted for former references to § 1410(a) and § 1411(f) of Title 42, United States Code. For-

mer §§ 1410(a) and 1411(f) of Title 42, United States Code, were omitted as superseded in the general revision of the United States Housing Act of 1937 by the Act of August 22, 1974, 88 Stat. 653, Pub. L. 93-383, § 201(a).

Discretion to determine rents subject to financial abilities of families. — While the Authority and the Department of Housing and Urban Development have the discretion to determine the levels and structure of rents of public housing, these agencies must be guided by the general directive that the rents be

within the financial reach of families of low income. *Thompson v. Washington*, 497 F.2d 626 (D.C. Cir. 1973).

Sovereign immunity no bar to action for rental relief. — The doctrine of sovereign immunity does not bar a class action on the behalf of the tenants of low-rent housing units for injunctive and declaratory relief with respect to scheduled rental increases. *Thompson v. Washington*, 497 F.2d 626 (D.C. Cir. 1973).

Tenants entitled to notice and opportunity to respond to rent proposals. — The tenants of low-rent public housing are entitled to notice of proposed rent increases and to an opportunity to respond in writing before the proposals are forwarded to the Department of Housing and Urban Development for approval. *Thompson v. Washington*, 497 F.2d 626 (D.C. Cir. 1973).

Relief afforded overcharged tenants. — While tenants of low-rent public housing are entitled to receive notice and opportunity to make written presentations prior to official approval of any rent increase, the court acts prop-

erly in refusing to order a reprocessing of past rents for the purpose of awarding a restitution to the tenants found to have been overcharged, but it cannot leave the invalidly derived rent schedule in effect for the indefinite future. *Thompson v. Washington*, 551 F.2d 1316 (D.C. Cir. 1977).

Remaining head of household entitled to grievance procedures. — An occupant, under current federal regulations, as the remaining head of the tenant household, is entitled to invoke Authority grievance procedure, including the provisions for preeviction hearing. *Nash v. Washington*, App. D.C., 360 A.2d 510 (1976).

But Authority may deny occupant tenancy status. — In the absence of any reliance or prejudice, estoppel will not be applied to prevent the Authority, after it accepts rental payments from an occupant after receiving notification of the lessees' deaths, from denying that such an occupant is a tenant. *Nash v. Washington*, App. D.C., 360 A.2d 510 (1976).

§ 5-114. Housing projects; contributions by District.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects, the District of Columbia, or any department, instrumentality, or agency thereof, may, upon such terms, with or without consideration, as it may determine, as a contribution:

(1) Dedicate, sell, convey, or lease any needed property to the Authority;

(2) Cause parks, playgrounds, or recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) Enter into agreements with the Authority respecting action to be taken pursuant to any of the powers granted by §§ 5-101 to 5-115;

(5) Cause services of a character which it is otherwise empowered to furnish to be furnished to the Authority;

(6) Enter into agreements with the Authority respecting the elimination of unsafe, insanitary, or unfit dwellings; and

(7) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects. (June 12, 1934, ch. 465, title II, § 204; June 25, 1938, 52 Stat. 1188, ch. 691, § 5; 1973 Ed., § 5-115.)

Section references. — This section is referred to in §§ 5-101, 5-102, 5-103, 5-104,

5-106, 5-108, 5-109, 5-110, 5-111, 5-113, 5-116, and 5-816.

§ 5-115. Loans by District authorized.

The Mayor of the District of Columbia is hereby authorized to lend to the Authority such amounts as may be necessary to enable the Authority to comply with the provisions of the United States Housing Act of 1937 and appropriations for such purpose are hereby authorized out of the revenues of the District of Columbia, and the Authority is empowered to accept such loans. (June 12, 1934, ch. 465, title II, § 205; June 25, 1938, 52 Stat. 1189, ch. 691, § 5; 1973 Ed., § 5-116.)

Section references. — This section is referred to in §§ 5-101 to 5-104, 5-106, 5-108 to 5-111, 5-113, 5-114, 5-116, and 5-816.

References in text. — The United States Housing Act of 1937, referred to in this section, is the Act of September 1, 1937, ch. 896.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-116. Low-rent public housing projects.

All projects now operated and maintained by the National Capital Housing Authority pursuant to §§ 5-101 to 5-110 are deemed to be low-rent housing projects and may be consolidated, pursuant to § 1437 et seq. of Title 42, United States Code, into any contract for annual contributions covering projects maintained and operated pursuant to §§ 5-111 to 5-115. (Aug. 1, 1968, 82 Stat. 607, Pub. L. 90-448, title XVII, § 1711; 1973 Ed., § 5-117.)

References in text. — The reference to § 1437 et seq. of Title 42, United States Code has been substituted for "§ 1415(6) of Title 42, United States Code." Former § 1415(6) of Title

42, United States Code, was omitted as superseded in the general revision of the United States Housing Act of 1937 by the Act of August 22, 1974, 88 Stat. 653, Pub. L. 93-383.

CHAPTER 2. BUILDING LINES.

Sec.	Sec.
5-201. Building lines established on streets less than 90 feet wide.	5-204. Permits for extensions of buildings beyond building line.
5-202. Condemnation proceedings — Filing of plats and petition.	5-205. Exceptions for existing buildings; control of parking.
5-203. Same — Procedures.	5-206. Appropriations.

§ 5-201. Building lines established on streets less than 90 feet wide.

The Mayor of the District of Columbia is authorized to establish building lines on streets or parts of streets less than 90 feet wide, in the District of Columbia, upon the presentation to him of a plat of the street or part of street upon which such action is desired, showing the lots and the names of the record owners thereof, and accompanied by a petition of the owners of more than one-half of the real estate shown on said plat requesting that building lines be established, or when the Mayor deems that the public interests require that such building lines be established; provided, that no such building lines shall be established on any part of street less than 1 block in length. (June 21, 1906, 34 Stat. 384, ch. 3505, § 1; 1973 Ed., § 5-201.)

Cross references. — As to powers and duties of Council and Mayor concerning building regulations, see § 1-322. As to zoning and height of buildings, see 5-401 et seq.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Elimination of building restriction line. — D.C. Law 7-64, effective January 28, 1988, found the building restriction line in Square 1661 on the west side of 43rd Street, N.W., between Jenifer Street, N.W., and Military Road, N.W., as shown on the surveyor's plat filed under S.O. 86-261, to be unnecessary for street purposes and ordered the restriction eliminated.

§ 5-202. Condemnation proceedings — Filing of plats and petition.

Upon the filing of such plat and petition in the Office of the Mayor of the District of Columbia or when the Mayor shall deem that the public interests require it, the said Mayor shall institute condemnation proceedings in the Superior Court of the District of Columbia, by a petition in rem, particularly describing the land to be taken, which petition shall be accompanied by duplicate plats, to be prepared by the Surveyor of said District, showing the location of said proposed building lines, the number of square feet to be taken from each lot or part of lot and the boundaries thereof in each square or block,

and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, 1 copy of the plat, indorsed with the docket number of the case, shall be returned by the Clerk of said Court to the said Surveyor for record in his office. (June 21, 1906, 34 Stat. 384, ch. 3505, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(15); 1973 Ed., § 5-202.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-203. Same — Procedures.

The condemnation proceedings herein provided for shall be in accordance with the provisions of Chapter 13 of Title 16 as far as the same are applicable; and the assessment proceedings and assessment area for the establishment of building lines herein provided for shall be the same as that provided in § 7-441 et seq., for assessments in the opening, extension, widening, and straightening of alleys or minor streets, in the same manner as if the establishment of building lines had been included in said section. (June 21, 1906, 34 Stat. 384, ch. 3505, § 3; 1973 Ed., § 5-203; May 10, 1989, D.C. Law 7-231, § 16, 36 DCR 492.)

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it

was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

This chapter does not require personal service; newspaper publication directed to all owners who can be found is sufficient. *National Sav. & Trust Co. v. Reichelderfer*, 57 F.2d 404 (D.C. Cir. 1932).

§ 5-204. Permits for extensions of buildings beyond building line.

The action of the Council of the District of Columbia in granting permits before March 3, 1891, for the extension of any building or buildings, or any part or parts thereof, in the District of Columbia, beyond the building line, and upon the streets and avenues of said District, is hereby ratified, without prejudice, however, to the legal rights of the government in the event of the destruction by fire, or otherwise, of any such structure. And after June 21, 1906, no such permits shall be granted except upon special application and with the concurrence of the Mayor of the District of Columbia, and where such

extensions are to be placed upon buildings to be erected on land adjoining United States public reservations, the approval of the Director of the National Park Service. (Mar. 3, 1891, 26 Stat. 868, ch. 540; July 1, 1898, 30 Stat. 570, ch. 543, § 3; June 21, 1906, 34 Stat. 385, ch. 3506; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Exec. Order No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; 1973 Ed., § 5-204.)

Cross references. — As to jurisdiction over public roads and bridges, see § 7-102.

Section references. — This section is referred to in §§ 5-205, 7-1004, 8-129, 8-137, and 8-138.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Co-

lumbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — All functions of all officers of the Department of the Interior and all functions of all agencies and employees of the Department, including the Director of the National Park Service, were transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorganization Plan No. 3 of 1950, 64 Stat. 1262, §§ 1, 2, 15 F.R. 3174.

§ 5-205. Exceptions for existing buildings; control of parking.

The Mayor of the District of Columbia, whenever he deems it desirable in the interest of economy, may permit buildings existing at the time said building lines are established and which project beyond said lines to remain until such time as the owner of said buildings desires to reconstruct or substantially alter the said buildings; provided, that § 5-204 shall apply to all parkings established under this chapter, and the control of said parkings otherwise shall be vested in the Mayor of the District of Columbia, and the Council of the District of Columbia is hereby authorized to make, and the Mayor is hereby authorized to enforce, all reasonable and necessary regulations for their care and preservation. (June 21, 1906, 34 Stat. 385, ch. 3505, § 4; 1973 Ed., § 5-205.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(116) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of

Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

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BUILDING RESTRICTIONS AND REGULATIONS

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-206. Appropriations.

The appropriation available for opening alleys and minor streets in the District of Columbia is hereby made available for the purpose of establishing building lines as provided for in this chapter. (June 21, 1906, 34 Stat. 385, ch. 3505, § 5; 1973 Ed., § 5-206.)

Cross references. — As to opening alleys and minor streets, see § 7-441 et seq.

CHAPTER 3. FLOOD HAZARDS.

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| <p>Sec.
5-301. Review of building permit applications; design and construction requirements.
5-302. Review of subdivision and other new development proposals.
5-303. Design of water and sanitary sewage systems; location of on-site waste disposal systems.</p> | <p>Sec.
5-304. Review of excavation, grading, filling, or construction permit applications; mudslide hazards.
5-305. Annual report.
5-306. Penalties.</p> |
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§ 5-301. Review of building permit applications; design and construction requirements.

The Mayor shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has flood hazard, the proposed new construction or substantial improvement (including prefabricated homes) must:

- (1) Be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) Use construction materials and utility equipment that are resistant to flood damage; and
- (3) Use construction methods and practices that will minimize flood damage. (1973 Ed., § 5-1101; May 26, 1976, D.C. Law 1-64, § 2, 22 DCR 7146.)

Legislative history of Law 1-64. — Law 1-64, the "District of Columbia Applications Insurance Implementation Act," was introduced in Council and assigned Bill No. 1-209, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 27, 1976, and February 24, 1976, respectively. Signed by

the Mayor on March 19, 1976, it was assigned Act No. 1-95 and transmitted to both Houses of Congress for its review.

Authority under District of Columbia Applications Insurance Implementation Act delegated. — See Mayor's Order 84-193, November 2, 1984.

§ 5-302. Review of subdivision and other new development proposals.

The Mayor shall review subdivision proposals and other proposed new developments to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards. (1973 Ed., § 5-1102; May 26, 1976, D.C. Law 1-64, § 3, 22 DCR 7146.)

Legislative history of Law 1-64. — See note to § 5-301.

§ 5-303. Design of water and sanitary sewage systems; location of on-site waste disposal systems.

The Mayor shall require new or replacement water systems and sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding. (1973 Ed., § 5-1103; May 26, 1976, D.C. Law 1-64, § 4, 22 DCR 7146.)

Legislative history of Law 1-64. — See note to § 5-301.

§ 5-304. Review of excavation, grading, filling, or construction permit applications; mudslide hazards.

The Mayor shall review each permit application for any excavation, grading, fill, or construction to determine whether the proposed site and improvements will be reasonably safe from mudslides. If a proposed site and improvements are in a location that may have mudslide hazards, a further review shall be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must:

- (1) Be adequately protected against mudslide damage; and
- (2) Not aggravate the existing hazard. (1973 Ed., § 5-1104; May 26, 1976, D.C. Law 1-64, § 5, 22 DCR 7146.)

Legislative history of Law 1-64. — See note to § 5-301.

§ 5-305. Annual report.

The Mayor shall submit an annual report before April 1st of each year to the Council to advise the public of progress made under the National Flood Control Program. (1973 Ed., § 5-1105; May 26, 1976, D.C. Law 1-64, § 6, 22 DCR 7146.)

Legislative history of Law 1-64. — See note to § 5-301.

§ 5-306. Penalties.

Violations of any provision of this chapter, including the implementing regulations, are punishable by the following penalties:

- (1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punishable by a fine of not more than \$300 for each day of the violation, or imprisoned for not more than 30 days, or both.

- (2) Any person who violates any provision of this chapter shall be liable to the District of Columbia for any and all consequential damages resulting from the violation, in addition to related costs and attorney fees.

(3) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to Chapter 27 of Title 6. (May 26, 1976, D.C. Law 1-64, § 6A, as added Mar. 8, 1991, D.C. Law 8-237, § 38, 38 DCR 314.)

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

CHAPTER 4. ZONING AND HEIGHT OF BUILDINGS.

Sec.

- 5-401. Nonfireproof dwellings.
- 5-402. Nonfireproof business buildings.
- 5-403. Buildings exceeding 60 feet in height; hotels, apartments, and tenements of 3 or more stories; halls with seating capacity of 300 or more; churches.
- 5-404. Additions; towers, spires, and domes; theaters.
- 5-405. Street width to control building height; business streets; residence streets; specified properties; structures above top story of building.
- 5-406. Frame dwellings.
- 5-407. Measurement of building height; parapet walls.
- 5-408. Violation of §§ 5-401 to 5-409.
- 5-409. Right of Congress to alter or repeal.
- 5-410. Erection or alteration of buildings fronting on certain federal property; applications submitted to Commission of Fine Arts for review.
- 5-411. Plats of restricted area.
- 5-412. Zoning Commission — Created; composition; appointment; term of office; compensation; Chairman; powers generally.
- 5-412.1. Office of Zoning; established.
- 5-412.2. Office of Zoning — Director and staff; appointment.
- 5-412.3. Same — Transfer of functions of Zoning Secretariat of Office of Planning.
- 5-412.4. Same — Recommendations, reports, review and comment by Office of Planning.

Sec.

- 5-413. Zoning Commission — Regulations; districts or zones.
- 5-414. Zoning regulations — Purpose.
- 5-415. Same — Existing regulations continued; public hearing on amendments required; notice.
- 5-416. Same — Vote required for amendment.
- 5-417. Same — Proposed regulations or amendments; public hearing; notice; National Capital Planning Commission.
- 5-418. Permissible maximum height of buildings.
- 5-419, 5-420. [Omitted.]
- 5-421. Transfer or use of chancery.
- 5-422. Discrimination against foreign government based on race, color, or creed prohibited.
- 5-423. Nonconforming use.
- 5-424. Board of Zoning Adjustment.
- 5-425. Maps and regulations of Zoning Commission to be filed; regulations to be published.
- 5-426. Building permits; certificates of occupancy.
- 5-427. Enforcement of zoning regulations.
- 5-428. Construction.
- 5-429. Definitions.
- 5-430. Appropriations authorized; compensation.
- 5-431. Laws repealed.
- 5-432. Federal public buildings excepted from §§ 5-413 to 5-432.
- 5-433. Mayor to prescribe fees for permits, certificates, and transcripts by Inspector of Buildings; schedule of fees to be displayed.
- 5-434. Cancellation of building permits.

§ 5-401. Nonfireproof dwellings.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied as a dwelling, flat, apartment house, tenement, lodging or boarding house, hospital, dormitory, or for any similar purpose shall be erected, altered, or raised to a height of more than 4 stories, or more than 55 feet in height above the sidewalk, and no combustible or nonfireproof building shall be converted to any of the uses aforesaid if it exceeds either of said limits of height. (June 1, 1910, 36 Stat. 452, ch. 263, § 1; May 20, 1912, 37 Stat. 114, ch. 124; 1973 Ed., § 5-401.)

Cross references. — As to powers and duties of Council and Mayor concerning building regulations, see § 1-322. As to National Capital Housing Authority, see § 5-101 et seq. As to zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 5-404, 5-405, 5-407, 5-408, 5-409, and 5-418.

Zoning regulations must bear substantial relationship to public health, safety,

morals, or welfare. *Dorsey v. Gotwals*, 57 F.2d 407 (D.C. Cir. 1932).

Court has no right to substitute its judg-

ment for that of Zoning Commission. *Salzer v. McLaughlin*, 240 F.2d 891 (D.C. Cir. 1957).

§ 5-402. Nonfireproof business buildings.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied for business purposes only shall be erected, altered, or raised to a height of more than 60 feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height. (June 1, 1910, 36 Stat. 452, ch. 263, § 2; 1973 Ed., § 5-402.)

Cross references. — As to Zoning Commission and zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 5-404, 5-405, 5-407, 5-408, 5-409, and 5-418.

§ 5-403. Buildings exceeding 60 feet in height; hotels, apartments, and tenements of 3 or more stories; halls with seating capacity of 300 or more; churches.

(a) All buildings of every kind, class, and description whatsoever, excepting churches only, erected, altered, or raised in any manner after June 1, 1910, as to exceed 60 feet in height shall be fireproof or noncombustible and of such fire-resisting materials, from the foundation up, as are now or at the time of the erecting, altering, or raising may be required by the building regulations of the District of Columbia.

(b) Hotels, apartment houses, and tenement houses erected, altered or raised in any manner after June 1, 1910, so as to be 3 stories in height or over and buildings converted after June 1, 1910, to such uses shall be of fireproof construction up to and including the main floor, and there shall be no space on any floor of such structure of an area greater than 2,500 square feet that is not completely inclosed by fireproof walls, and all doors through such walls shall be of noncombustible materials.

(c) Every building erected after June 1, 1910, with a hall or altered so as to have a hall with a seating capacity of more than 300 persons when completed, as provided by the building regulations, and every church thereafter erected or building converted after June 1, 1910, for use as a church, with such seating capacity, shall be of fireproof construction up to and including the floor of such hall or the auditorium of such church as the case may be. (June 1, 1910, 36 Stat. 452, ch. 263, § 3; 1973 Ed., § 5-403.)

Cross references. — As to Zoning Commission and zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 5-404, 5-405, 5-407, 5-408, 5-409, and 5-418.

§ 5-404. Additions; towers, spires, and domes; theaters.

(a) Additions to existing combustible or nonfireproof structures after June 1, 1910, erected, altered, or raised to exceed the height limited by §§ 5-401 to 5-408 for such structures shall be of fireproof construction from the foundation up, and no part of any combustible or nonfireproof building shall be raised above such limit or height unless that part be fireproof from the foundations up.

(b) Towers, spires, or domes, thereafter constructed more than 60 feet above the sidewalk, must be of fireproof material from the foundation up, and must be separated from the roof space, choir loft, or balcony by brick walls without openings, unless such openings are protected by fireproof or metal-covered doors on each face of the wall. Full power and authority is hereby granted to and conferred upon every person, whose application was filed in the Office of the Mayor of the District of Columbia prior to the adoption of the present building regulations of said District, to construct a steel fireproof dome on any buildings owned by such person, in square 345 of said District, as set forth in the plans and specifications annexed to or forming a part of such applications so filed, any other provision in §§ 5-401 to 5-408 contained to the contrary notwithstanding. And the Inspector of Buildings of said District shall make no changes in said plans and specifications unless for the structural safety of the building it is necessary to do so.

(c) Every theater erected after June 1, 1910, and every building converted thereafter to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof construction from the foundation up and have fireproof walls between it and other buildings connected therewith, and any theater damaged to one-half its value shall not be rebuilt except with fireproof materials throughout and otherwise in accordance with the building regulations of the District of Columbia. (June 1, 1910, 36 Stat. 453, ch. 263, § 4; 1973 Ed., § 5-404.)

Cross references. — As to Zoning Commission and zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 5-405, 5-407, 5-408, 5-409, and 5-418.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-405. Street width to control building height; business streets; residence streets; specified properties; structures above top story of building.

(a) No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of 2 or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the Mayor of the District of Columbia.

(b) No buildings shall be erected, altered, or raised in any manner as to exceed the height of 130 feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted.

(c) On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over 90 feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by 10 feet, except on the street, avenue, or highway 60 to 65 feet wide, where a height of 60 feet may be allowed; and on a street, avenue, or highway 60 feet wide or less, where a height equal to the width of the street may be allowed; provided, that any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this subsection, and the Mayor of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of 95 feet above the level of the adjacent curb.

(d) The height of a building on a corner lot will be determined by the width of the wider street.

(e) On streets less than 90 feet wide where building lines have been established and recorded in the Office of the Surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, insofar as it controls the height of buildings under §§ 5-401 to 5-409, shall be held to be the distance between said building lines.

(f) On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia.

(g) Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than 80 feet.

(h) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in §§ 5-401 to 5-409 when and as the same may be approved by the Mayor of the District of Columbia; provided, however, that such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed; and provided, that penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof; and provided further, that a building be permitted to be erected to a height not to exceed 130 feet on lots 15, 804, and 805, square 322, located on the southeast corner of 12th and E Streets Northwest, said building to conform in height and to be used as an addition to the hotel building located to the east thereof on lot 18, square 322; and further provided, that the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of 14th and F Streets Northwest, be permitted to be erected to a height not to exceed 140 feet above the F Street curb; and provided further, that the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, and the east by 19th Street, and on the north by a property line running east and west 564 feet in length, said building to cover an area not exceeding 14,000 square feet and to be located on said property not less than 40 feet distant from the north property line, not less than 320 feet distant from the Connecticut Avenue property line, not less than 160 feet distant from the 19th Street property line, and not less than 360 feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of 20th Street meets said boundary, be permitted to be erected to a height not to exceed 180 feet above the level of the existing grade at the center of the location above described; and provided further, that the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Planning Commission, both of the District of Columbia; and further provided, that the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road Northwest in the District of Columbia, approximately opposite 39th Street, plans for which building are on file in the Office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed 110 feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building. (June 1, 1910, 36 Stat. 452, ch. 263, § 5; Dec. 30, 1910, 36 Stat. 891, ch. 8; June 7, 1924, 43 Stat. 647, ch. 340; Feb. 21, 1925, 43 Stat. 961, ch. 289; May 16, 1926, 44 Stat. 298, ch. 150; Apr. 29, 1930, 46 Stat. 258, ch. 220; Mar. 24, 1945, 59

Stat. 38, ch. 37; Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-281, § 1; 1973 Ed., § 5-405.)

Cross references. — As to Zoning Commission and zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 1-233, 5-404, 5-407, 5-408, 5-409, and 5-418.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(120) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Office of Inspector of Buildings abolished. — Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and posi-

tions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

D.C. Schedule of Heights Amendment Act disapproved by Congress. — Pursuant to Pub. L. 102-11, 105 Stat. 33, effective March 12, 1991, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress hereby disapproves of the action of the District of Columbia Council described as follows: The Schedule of Heights Amendment Act of 1990 (D.C. Act 8-329), signed by the Mayor of the District of Columbia on December 27, 1990, and transmitted to Congress pursuant to section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act on January 15, 1991.

Building fronts on public space. — An exception to the general rule provides that when a building fronts on a public space or reservation formed at the intersection of two or more streets, avenues or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Techworld

Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106 (D.D.C. 1986).

Surveyor determined the width of the fronting street to be not less than 110 feet, be-

cause of locations on a public space. Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106 (D.D.C. 1986).

§ 5-406. Frame dwellings.

No wooden or frame building erected, altered, or converted after June 1, 1910, for use as a human habitation shall exceed 3 stories or exceed 40 feet in height to the roof. (June 1, 1910, 36 Stat. 454, ch. 263, § 6; 1973 Ed., § 5-406.)

Cross references. — As to Zoning Commission and zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 5-404, 5-405, 5-407, 5-408, 5-409, and 5-418.

§ 5-407. Measurement of building height; parapet walls.

For the purposes of §§ 5-401 to 5-409 the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding 4 feet will be permitted above the limit of height of building permitted under §§ 5-401 to 5-409. (June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124; 1973 Ed., § 5-407.)

Cross references. — As to Zoning Commission and zoning regulations, see §§ 5-412 to 5-432.

Section references. — This section is referred to in §§ 5-404, 5-405, 5-408, 5-409, and 5-418.

§ 5-408. Violation of §§ 5-401 to 5-409.

Buildings erected, altered, or raised or converted in violation of any of the provisions of §§ 5-401 to 5-409, are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District, and which said Court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than \$10 nor more than \$100 per day for each and every day such nuisance shall be permitted to continue, and shall be required by said Court to abate such nuisance. The Corporation Counsel of the District of Columbia may maintain an action in the Superior Court of the District of Columbia in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not less than \$100 nor more than \$500, or by

imprisonment in the Washington Asylum and Jail for not less than 30 days nor more than 6 months, or by both such fine and imprisonment, in the discretion of the Court. (June 1, 1910, 36 Stat. 454, ch. 263, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a), (c)(18); 1973 Ed., § 5-408.)

Section references. — This section is referred to in §§ 5-404, 5-405, 5-407, 5-409, and 5-418.

Standing to enforce. — There was no general private right of action and therefore preservationists' claim was dismissed, but the federal government stands on a different foot-

ing; the statute indirectly authorizes a neighboring property owner, such as the government, to bring an action to enforce the Height of Building Act. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

§ 5-409. Right of Congress to alter or repeal.

Congress reserves the right to alter, amend, or repeal §§ 5-401 to 5-409. (June 1, 1910, 36 Stat. 455, ch. 263, § 9; 1973 Ed., § 5-409.)

Section references. — This section is referred to in §§ 5-405, 5-407, 5-408, and 5-418.

§ 5-410. Erection or alteration of buildings fronting on certain federal property; applications submitted to Commission of Fine Arts for review.

In view of the provisions of the Constitution respecting the establishment of the seat of the national government, the duties it imposed upon Congress in connection therewith, and the solicitude shown and the efforts exerted by President Washington in the planning and development of the capital city, it is declared that such development should proceed along the lines of good order, good taste, and with due regard to the public interests involved, and a reasonable degree of control should be exercised over the architecture of private or semipublic buildings adjacent to public buildings and grounds of major importance. To this end, when application is made for permit for the erection or alteration of any building, any portion of which is to front or abut upon the grounds of the Capitol, the grounds of the White House, the portion of Pennsylvania Avenue extending from the Capitol to the White House, Lafayette Park, Rock Creek Park, the Zoological Park, the Rock Creek and Potomac Parkway, Potomac Park, the Mall Park System and public buildings adjacent thereto, or abutting upon any street bordering any of said grounds or parks, the plans therefor, so far as they relate to height and appearance, color, and texture of the materials of exterior construction, shall be submitted by the Mayor of the District of Columbia to the Commission of Fine Arts; and the said Commission shall report promptly to said Mayor its recommendations, including such changes, if any, as in its judgment are necessary to prevent reasonably avoidable impairment of the public values belonging to such pub-

lic building or park; and said Mayor shall take such action as shall, in his judgment, effect reasonable compliance with such recommendation; provided, that if the said Commission of Fine Arts fails to report its approval or disapproval of such plans within 30 days, its approval thereof shall be assumed and a permit may be issued. (May 16, 1930, 46 Stat. 366, ch. 291, § 1; July 31, 1939, 53 Stat. 1144, ch. 400; 1973 Ed., § 5-410.)

Cross references. — As to Commission of Fine Arts, see 40 U.S.C. §§ 104 to 106. As to powers and duties of Zoning Commission, see §§ 5-412 to 5-432. As to issuance of building permits, see § 5-426.

Section references. — This section is referred to in §§ 5-1005, 5-1007, 7-1004, 7-1034, and 7-1041.

Delegation of Authority Under the "Shipstead-Luce Act". — See Mayor's Order 89-92, May 9, 1989.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Purpose of this section is to enhance and preserve the beauty and aesthetic value of specified parts of the District, but the Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Stanley Co. of America v. Tobriner*, 298 F.2d 318 (D.C. Cir. 1961).

Function of Commission under this section is confined essentially to making recommendations concerning applications for permits for the erection or alteration of certain buildings. *Commissioner of D.C. v. Benenson*, App. D.C., 329 A.2d 437 (1974).

Area of authority of Commission. — The northeast corner of the intersection of 13th and E Streets Northwest, is within the area of authority of the Commission of Fine Arts. *Stanley Co. of Am. v. Tobriner*, 298 F.2d 318 (D.C. Cir. 1961).

"Alteration" defined. — The term "alteration," as used in this section, means a change, in the sense of adding to, remodeling, or reconstruction. *Commissioner of D.C. v. Benenson*, App. D.C., 329 A.2d 437 (1974).

The demolition of all but the girders and joists of a building's structure does not constitute an "alteration" within the meaning of this section. *Commissioner of D.C. v. Benenson*, App. D.C., 329 A.2d 437 (1974).

Cited in Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 571 A.2d 195 (1990).

§ 5-411. Plats of restricted area.

The Council of the District of Columbia, in consultation with the National Capital Planning Commission, shall prepare plats defining the areas within which application for building permits shall be submitted to the Commission of Fine Arts for its recommendations. (May 16, 1930, 46 Stat. 367, ch. 291, § 2; 1973 Ed., § 5-411.)

Cross references. — As to issuance of building permits, see § 5-426.

Section references. — This section is referred to in §§ 7-1004, 7-1034, and 7-1041.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(121) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the

Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — “National Capital Planning Commission” was substituted for

“National Capital Park and Planning Commission” in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Purpose of this section is to enhance and preserve the beauty and aesthetic value of specified parts of the District, but the Commission’s authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Stanley Co. of Am. v. Tobriner*, 298 F.2d 318 (D.C. Cir. 1961).

§ 5-412. Zoning Commission — Created; composition; appointment; term of office; compensation; Chairman; powers generally [Charter Provision].

(a) To protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the Director of the National Park Service, and 3 members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of 4 years, except of the members first appointed under this section:

(1) One member shall serve for a term of 2 years, as determined by the Mayor;

(2) One member shall serve for a term of 3 years, as determined by the Mayor; and

(3) One member shall serve for a term of 4 years, as determined by the Mayor.

(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority of the Council. The remaining members shall serve without additional compensation.

(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

(d) The Chairman of the Zoning Commission shall be selected by the members.

(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law. (Mar. 1, 1920, 41 Stat. 500, ch. 92, § 1; Mar. 3, 1921, 41 Stat. 1291, ch. 124; Feb. 26, 1925, 43 Stat. 983, ch. 339; Exec. Order No. 6166, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; 1973 Ed., § 5-412; Dec. 24, 1973, 87 Stat. 810, Pub. L. 93-198, title IV, § 492(a).)

Charter provision. — This section of the D.C. Code is § 492(a) of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to Architect of Capitol, see 40 U.S.C. § 161 et seq. As to powers and duties of Council and Mayor concerning building regulations, see § 1-322. As to National Capitol Housing Authority, see § 5-101 et seq. As to building lines, see § 5-201 et seq. As to compensation of members of Zoning Commission, see § 5-430. As to fire safety measures and fire escapes, see §§ 5-501 to 5-538. As to insanitary buildings, see § 5-701 et seq.

Section references. — This section is referred to in §§ 1-299.2, 1-1462, 5-413, 5-415, 5-423, 5-430, and 5-431.

Definitions applicable. — The definitions in § 1-202 apply to this section.

Transfer of functions. — All functions of all officers of the Department of the Interior and all functions of all agencies and employees of the Department, including the Director of the National Park Service, were transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorganization Plan No. 3 of 1950, 64 Stat. 1262, §§ 1, 2, 15 F.R. 3174.

Exclusive authority of Zoning Commission. — The Zoning Commission has exclusive authority to amend the zoning regulations of the District of Columbia. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

The Zoning Commission is the exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with the District's comprehensive plan. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

Authority not exceeded. — The Commission did not exceed its authority in approving a planned unit development application which included an off-site housing amenity in the nearby neighborhood. *Blagden Alley Ass'n v. Zoning Comm'n*, App. D.C., 590 A.2d 139 (1991).

There is no deprivation of private property under this chapter in violation of the Fifth Amendment. *Larrabee v. Bell*, 10 F.2d 986 (D.C. Cir. 1926).

Standard of review for constitutionality

of zoning actions. — The action of zoning authorities, as of other administrative offices, is not to be declared unconstitutional unless the court is convinced that it is clearly arbitrary and unreasonable, having no substantial relation to the general welfare. *Lewis v. District of Columbia*, 190 F.2d 25 (D.C. Cir. 1951).

Zoning regulations are not government contracts and may be modified by Congress. *Reichelderfer v. Quinn*, 287 U.S. 315, 53 S. Ct. 177, 77 L. Ed. 331 (1932).

There is a presumption that the District regulations and actions are reasonable. *Hagans v. District of Columbia*, App. D.C., 97 A.2d 922 (1953).

And, in absence of evidence to the contrary, the court will uphold them. *Golf, Inc. v. District of Columbia*, 67 F.2d 575 (D.C. Cir. 1934).

Objecting landowner not afforded hearing where less than quorum of Commission attend. — A landowner objecting to a rezoning of adjoining property is not afforded his statutory right to a reasonable opportunity to be heard where only 2 of the 5 members of the Zoning Commission attend the public hearing to hear protests against the rezoning. *Allen v. Zoning Comm'n of D.C.*, 449 F.2d 1100 (D.C. Cir. 1971).

Findings not required in denial of zoning change. — The Zoning Commission is not required to state its reasons nor make any findings of fact in denying an application for a change in a zoning classification. *Shenk v. Zoning Comm'n of D.C.*, 440 F.2d 295 (D.C. Cir. 1971).

Landowners waive right to sue Commission by settling with government. — Landowners waive their right to a hearing on the probability of rezoning and its effect on the value of their land by settling with the government and are not entitled after a settlement to maintain an action against the Zoning Commission. *Sittenfeld v. Tobriner*, 459 F.2d 1137 (D.C. Cir. 1972).

Commission members are immune from damages to condemnees of land zoned by them. *Sittenfeld v. Tobriner*, 459 F.2d 1137 (D.C. Cir. 1972).

New application for rezoning based on new evidence allowed. — If, after a reasonable time, a new application for rezoning is made, based on a showing of intervening occurrences and changed conditions, the Commission is not entitled to regard its previous action and the affirmance of its action by a court as conclusive. *Lewis v. District of Columbia*, 190 F.2d 25 (D.C. Cir. 1951).

Basis of rezoning decision. — The zoning commissioners are entitled to consider the entire situation in a particular locality and need not close their eyes to such factors as the adequacy and good condition of existing buildings

for uses to which they are presently being put, the need of the community for those uses, and the style and attractiveness of existing buildings, since all of this is relevant to the preservation of values of the surrounding property. *Lewis v. District of Columbia*, 190 F.2d 25 (D.C. Cir. 1951).

The Zoning Commission, in considering whether to change a classification from residential to commercial, may consider the eligibility of the property for commercial use and for the use of educational or philanthropic institutions, trade associations, and professional persons. *Lewis v. District of Columbia*, 190 F.2d 25 (D.C. Cir. 1951).

Remedy after refusal of permit. — The remedy for a refusal to issue a permit to erect a structure is to appeal first, not to seek a mandamus. *United States ex rel. Connor v. District of Columbia*, 61 F.2d 1015 (D.C. Cir. 1933).

Suit to declare zoning order void is not appeal on the merits of the issues presented to the Zoning Commission at its hearing. *Lewis v. District of Columbia*, 190 F.2d 25 (D.C. Cir. 1951).

Standard of review for comprehensive zoning plan. — In reviewing the exercise of discretion given to the Zoning Commission for establishing a comprehensive zoning plan, it is not the function of the court to substitute its judgment for that of the Commission, even for reasons which appear most persuasive. *Lewis v. District of Columbia*, 190 F.2d 25 (D.C. Cir. 1951).

Cited in *Garrity v. District of Columbia*, 86 F.2d 207 (D.C. Cir. 1936); *Hazen v. Hawley*, 86 F.2d 217 (D.C. Cir.), cert. denied, 299 U.S. 613, 57 S. Ct. 315, 81 L. Ed. 452 (1936).

§ 5-412.1. Office of Zoning; established.

There is established as an independent agency of the District of Columbia ("District") government an Office of Zoning to provide professional, technical, or administrative staff assistance to the Zoning Commission for the District ("Zoning Commission") and to the Board of Zoning Adjustment in the performance of their functions and any other duties provided by law. (Sept. 20, 1990, D.C. Law 8-163, § 2, 37 DCR 4676.)

Section references. — This section is referred to in §§ 5-412.3 and 5-412.4.

Section effective October 1, 1991. — Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

Legislative history of Law 8-163. — Law 8-163, the "Office of Zoning Independence Act of 1990," was introduced in Council and as-

signed Bill No. 8-118, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Approved without the signature of the Mayor on June 29, 1990, it was assigned Act No. 8-227 and transmitted to both Houses of Congress for its review.

§ 5-412.2. Office of Zoning — Director and staff; appointment.

The Office of Zoning shall consist of a Director and other staff as the Zoning Commission deems necessary, subject to appropriations. The Director of the Office of Zoning shall be appointed by the District members of the Zoning Commission and shall serve as an excepted service employee in accordance with § 1-610.1. (Sept. 20, 1990, D.C. Law 8-163, § 3, 37 DCR 4676.)

Section references. — This section is referred to in § 5-412.4.

Section effective October 1, 1991. — Section 7(b) of D.C. Law 8-163 provided that the

provisions of the act shall not apply until October 1, 1991.

Legislative history of Law 8-163. — See note to § 5-412.1.

§ 5-412.3. Same — Transfer of functions of Zoning Secretariat of Office of Planning.

In accordance with § 1-227(b), the functions of the Zoning Secretariat of the Office of Planning, under the direction of the Deputy Mayor for Economic Development pursuant to the Establishment of the Office of Economic Development, effective January 3, 1983 (M.O. 83-18; 30 DCR 319), and any position, property, record, unexpended balance of appropriations, allocation, or other funds available to or to be made available relating to the functions of the Zoning Secretariat of the Office of Planning, are transferred to the Office of Zoning established by § 5-412.1. (Sept. 20, 1990, D.C. Law 8-163, § 4, 37 DCR 4676.)

Section references. — This section is referred to in § 5-412.4.

Section effective October 1, 1991. — Section 7(b) of D.C. Law 8-163 provided that the

provisions of the act shall not apply until October 1, 1991.

Legislative history of Law 8-163. — See note to § 5-412.1.

§ 5-412.4. Same — Recommendations, reports, review and comment by Office of Planning.

Nothing in §§ 5-412.1 through 5-412.4 shall be construed to prevent the Office of Planning from continuing to provide recommendations and reports to the Zoning Commission and the Board of Zoning Adjustment on any zoning case. The Office of Planning shall review and comment upon all zoning cases, and the Zoning Commission and the Board of Zoning Adjustment shall give great weight to the recommendation of the Office of Planning. Upon request of the Zoning Commission or the Board of Zoning Adjustment, the Office of Planning shall provide recommendations, information, or technical assistance in a timely manner. (Sept. 20, 1990, D.C. Law 8-163, § 5, 37 DCR 4676.)

Section effective October 1, 1991. — Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

Legislative history of Law 8-163. — See note to § 5-412.1.

§ 5-413. Zoning Commission — Regulations; districts or zones.

To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital, the Zoning Commission created by § 5-412, is hereby empowered, in accordance with the conditions and procedures specified in §§ 5-413 to 5-432, to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation said Commission may divide the District of

Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land. The said Zoning Commission shall also have power to promulgate regulations to require, with respect to buildings erected subsequent to the promulgation of such regulations, that facilities be provided and maintained either on the same lot with any such building, or on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted therein. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in 1 district may differ from those in other districts. (June 20, 1938, 52 Stat. 797, ch. 534, § 1; Mar. 4, 1942, 56 Stat. 122, ch. 126; 1973 Ed., § 5-413.)

Cross references. — As to rules and regulations, see §§ 1-315, 1-319, and 1-322. As to recommendations of National Capital Planning Commission regarding zoning regulations, see § 1-2006. As to height of buildings, see §§ 5-401 to 5-409 and 5-418.

Section references. — This section is referred to in §§ 5-415, 5-423, 5-424, 5-426 to 5-432, and 9-401.

Section requires only that the zoning regulations be applied uniformly to all property throughout the District, with all owners of the same class being treated alike and does not prohibit a classification which is reasonable. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, *aff'd*, App. D.C., 364 A.2d 610, *cert. denied*, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Nonconforming use defined. — A nonconforming use is an exception to generally applicable zoning requirements for a previously lawful, existing use. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Recognition of nonconforming uses to protect property owners. — The government recognizes nonconforming uses in derogation of the general zoning scheme in order to protect the interests of property owners. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Right to nonconforming use generally runs with the land. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Commission has broad authority to regulate nonconforming uses and structures. — While Congress was unwilling to empower the Zoning Commission to adopt regulations man-

dating the termination of nonconforming uses, it nevertheless gave the Zoning Commission broad authority to regulate both nonconforming uses and structures. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 428 A.2d 356 (1981).

And Commission may prohibit enlargement of nonconforming use. — Nothing in this section precludes the Zoning Commission from promulgating a regulation prohibiting the enlargement of a structure that is devoted to a nonconforming use. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 428 A.2d 356 (1981).

Regulations do not mandate perpetuation of nonconforming uses. — Although the Zoning Enabling Act of 1938 and zoning regulations protect nonconforming uses from arbitrary termination, they do not mandate any action that perpetuates such uses. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 428 A.2d 356 (1981).

Intent to preserve nonconforming use manifested by reconstruction. — Reconstruction to accommodate a new nonconforming use pursuant to Board of Zoning Adjustment approval manifests an intent to preserve, not give up, nonconforming use. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Owner not deprived of nonconforming use by lapse of time without active pursuit. — The mere lapse of time without active pursuit of a nonconforming use does not deprive the owner of that right. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Abandonment of nonconforming use. — If an owner evidences his rejection of the protection afforded to previously lawful, though

presently nonconforming, existing uses by discontinuing a nonconforming use, he abandons his right to that exemption and thereafter must comply with general zoning requirements. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Obedience to government orders is not an act indicative of an intent to abandon a nonconforming use. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Property owner has no right to a particular zoning classification of his property, and thus a hearing upon a property owner's proposed zoning map amendment before its denial is not constitutionally required. *W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n*, App. D.C., 340 A.2d 420 (1975).

Notice of final hearing need not specify presentation of additional evidence. — Notice of the final hearing on an application for approval of a planned unit development does not deprive a party of due process of law in not specifying that this hearing will include the presentation of additional evidence relating to issues that have already been aired at a preliminary stage, and the Zoning Commission is not precluded from reexamining at this final hearing matters that have already been dealt with. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Zoning Commission is a quasi-legislative body. The Citizens Ass'n of Georgetown, Inc. v. Washington, App. D.C., 291 A.2d 699 (1972).

And proceedings before the Commission are quasi-legislative in character, not adjudicative in nature, and, hence, the strictures of the Administrative Procedure Act (§ 1-1501 et seq.) and the full range of due process protections necessary to an adversary adjudication are not applicable. *Ruppert v. Washington*, 366 F. Supp. 686 (D.D.C. 1973), aff'd, 543 F.2d 416 (D.C. Cir. 1976).

When the Zoning Commission denies without a public hearing a proposed amendment to the zoning maps to change a zoning classification of certain property, the Commission is acting legislatively and such a decision is not subject to direct appellate review. *W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n*, App. D.C., 340 A.2d 420 (1975).

Absent "contested case" status, appellate court lacks jurisdiction to directly review Commission's order amending zoning regulations. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 343 A.2d 296 (1975).

Proceeding held under the Commission's

rules of practice is not a "contested case" within the meaning of the Administrative Procedure Act (§ 1-1501 et seq.), but it is adversary in nature and equity can be invoked to grant judicial review. *Ruppert v. Washington*, 366 F. Supp. 683 (D.D.C. 1973).

But controversy following adjudicatory hearing "contested case". — A controversy which arises out of the Zoning Commission's actions in granting a change in zoning, which action follows an adjudicatory hearing, is a "contested case" which the appellate court has jurisdiction to review. *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 368 A.2d 1143 (1977).

As well as proceeding involving specific evidence. — For purposes of judicial review, a proceeding resulting in a rezoning is a "contested case" where not only does the Zoning Commission treat the proceeding as such under its own rules, but where the matter involves specific evidence concerning a single parcel of property and a resolution of the conflict does not depend on broad legislative policy judgments. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Commission has authority for fixing the minimum width and sizes of residential lots. *Salzer v. McLaughlin*, 240 F.2d 891 (D.C. Cir. 1957).

Commission has the power to create a residential restricted zoning use district. *Hagans v. District of Columbia*, App. D.C., 97 A.2d 922 (1953).

Matters of discretion for Commission. — Whether mistakes were made in locating the boundaries of a commercial district and whether, on a change of character of the neighborhood, a certain street should be reclassified, are matters of discretion for the Zoning Commission. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 225 (D.D.C. 1964).

Environmental statement requirement request not necessarily request for advisory opinions. — The absence of a pending application for redevelopment does not necessarily render a request for a determination of whether the requirement of an environmental impact statement would be triggered by the redevelopment of zoning, a request for an advisory opinion. *McLean Gardens Residents Ass'n v. National Capital Planning Comm'n*, 390 F. Supp. 165 (D.D.C. 1974).

Commission may be required to state reasons for decision. — Although the Zoning Commission is a quasi-legislative body and is not required to support its legislative-type judgments with findings of fact, it may still be required to state reasons for its decisions. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Fact that the Administrative Procedure Act (§ 1-1501 et seq.) expressly imposes a statement of reasons requirement only for contested cases does not bar imposing such a requirement in other contexts. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Reasons differ from findings in that reasons relate to law, policy, and discretion rather than to facts. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Any deficiencies in a preliminary decision are remedied by legally adequate order. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

But actions not supported by record viewed as arbitrary. — If the Zoning Commission acts for reasons not a matter of record, the court is required to find its actions arbitrary. *Ruppert v. Washington*, 366 F. Supp. 686 (D.D.C. 1973), aff'd, 543 F.2d 416, 417 (D.C. Cir. 1976).

Refusal to consider height covenant error. — A refusal of the Zoning Commission in its rezoning determination to consider a covenant whereby a developer limited the maximum height of any building to a height less than that allowed by the zoning code, is error. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Refusal to consider greater income not error. — Residential zoning is not invalidated by the fact that if certain property were available for business purposes it would bring the owner more revenue. *Leventhal v. District of Columbia*, 100 F.2d 94 (D.C. Cir. 1939).

Evidence of greater income from certain property if it is rezoned does not establish any abuse in the Commission's action in declining to rezone. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

It is unnecessary to show mistake in previous zoning to permit zoning change on the grounds of substantial change. *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 368 A.2d 1143 (1977).

Findings sufficient to support rezoning. — Findings that, since the adoption of the comprehensive zoning plan, there have been substantial changes in certain areas, that a rezoning will promote an early and orderly development of the property in question, that the rezoning will not produce dangerous or objectionable traffic conditions, that the rezoning is in harmony with the comprehensive zoning plan, that the rezoning will not adversely affect the character or uses of adjacent districts, and that

the rezoning will require site plan review, are sufficient to support a rezoning. *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 368 A.2d 1143 (1977).

Weight given recommendations of Planning Commission. — The Zoning Commission must accord substantial weight and respect to the National Capital Planning Commission's statutorily authorized commentary on proposed maps and regulations and amendments to the comprehensive plan. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

The Zoning Commission is not bound to follow the National Capital Planning Commission's recommendation to adopt an interim amendment, nor is it required to show a compelling public interest before it can override the recommendation. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Inasmuch as Commission is not federal agency, no environmental impact statement is required for its actions. *Ruppert v. Washington*, 366 F. Supp. 686 (D.D.C. 1973), aff'd, 543 F.2d 416 (D.C. Cir. 1976).

But where environmental effects substantial, Commission must consider issue. — Where the potential environmental effects of a decision of the Zoning Commission are substantial, it must at least consider the issue in order to fulfill its public interest mandate. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

And environmental policies delineated in federal provisions should find expression in zoning process. — Although the Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications for planned unit developments or for amendments of zoning maps and regulations, the environmental policies delineated in the national Environmental Policy Act should find expression in the planning and zoning process in the District. *McLean Gardens Residents Ass'n v. National Capital Planning Comm'n*, 390 F. Supp. 165 (D.D.C. 1974).

Contacts of Commission with federal agencies do not defeat validity of zoning order. *Ruppert v. Washington*, 366 F. Supp. 686 (D.D.C. 1973), aff'd, 543 F.2d 416, 417 (D.C. Cir. 1976).

And neither do contacts with Assistant Director of Planning Office. — Permitting the Assistant Director of the Office of Planning and Management to present, at the executive session of the Zoning Commission, a written summary and abstract of the evidence presented at a public hearing in connection with a rezoning application does not violate an oppo-

ment's right to a hearing, since the Assistant Director is merely acting in accordance with his position as a staff member of the Commission. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Communications between Commission and Adjustment Board should be part of public record. — While the channel for communications between the Zoning Commission and the Board of Zoning Adjustment may become a conduit for pressures external to the Zoning Commission, which abuse might invalidate a Board decision, such communications, if they do occur, should be made a part of the public record so that interested parties may comment. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 341 A.2d 312 (1975).

And Commission member of Board bound to base vote upon proceedings before Board. — The person designated by the Zoning Commission to represent the Commission on the Board of Zoning Adjustment is authorized to express the Commission's concerns and to cast his vote with full knowledge of the attitudes and policy positions of the Commission's members, but he is bound to cast his vote with the Board based exclusively upon the record of the proceedings before the Board. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 341 A.2d 312 (1975).

Procedural requirements found to be complied with. — Where there is a quorum of the Zoning Commission present at a public hearing, where a decision to grant a change in zoning is made unanimously by the entire 5-member Commission, where the order itself, containing the finding of fact and conclusions of law, is later signed by 3 members, 2 of whom were present at the hearing, and where an opportunity is granted to the objectors to file exceptions and present argument to the majority of those who rendered the order, the provisions of the Administrative Procedure Act (§ 1-1501 et seq.) are sufficiently complied with. *Palisades Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 368 A.2d 1143 (1977).

Absence of 1 member of the Zoning Commission from the session at which a rezoning order is signed does not violate § 1-1509(d), which requires that a majority of those who are to render the final order personally hear the evidence, where no evidence is introduced and the purpose is merely to review the findings of fact and conclusions of law and sign the previously approved order. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Commission is not required to serve proposed findings on a party who withdraws from a hearing. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Nor upon parties where majority of Commission members hear evidence. — Where the majority of Commission members hear all the evidence at a hearing, the rule regarding service of proposed findings and conclusions on each party is inapposite. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Transfer of development rights between building owners. — Where the total floor area ratio for a planned unit development is a determinative figure there is no impediment to permitting a transfer of development rights from one building owner to another within the same project when agreed to by the parties. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Rezoning of small parcel not "spot zoning". — Rezoning of a small parcel to permit more intensive development than the limited residential use called for in the comprehensive plan does not constitute unlawful "spot zoning." *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Order takes effect when published. — Even if a zoning order does not become "final" before it is made available to the parties, it takes effect and is "issued" when it is published. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Factors leading to denial of preliminary injunction. — A preliminary injunction against the enforcement of a zoning order will be denied where the issues are novel, the likelihood of success on the merits appears slight, and there is no affirmative showing of an urgent necessity for an interference with planning efforts. *Ruppert v. Washington*, 366 F. Supp. 683 (D.D.C. 1973).

And to denial of permanent injunction. — It is improper to determine the merits and to issue a permanent injunction against a particular property use without requiring a recourse, under the doctrine of primary jurisdiction, to the administrative remedies available to the parties. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847 (D.C. Cir. 1971).

"Exception" to ordinance defined. — An "exception" in a zoning ordinance is allowed where the facts and conditions detailed in the ordinance, as those upon which an exception may be permitted, are found to exist. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Prerequisites for exception must be satisfied before decision issued. — The factors established by a zoning regulation as prerequisites for the allowance of an exception must be satisfied before the Board of Zoning Adjustment may lawfully issue its decision. *Robey v. Schwab*, 307 F.2d 198 (D.C. Cir. 1962).

And Adjustment Board must state "full reasons" for its decision. — "Full reasons," within the meaning of a zoning regulation which directs that the full reasons for the decisions of the Board of Zoning Adjustment shall be entered in the minutes, means that, in order to support its conclusions, the Board shall make basic findings of fact regarding exceptions and, although a finding need not amount to an exhaustive summation of all the evidence, the Board must state the facts which persuaded it to arrive at its decision. *Robey v. Schwab*, 307 F.2d 198 (D.C. Cir. 1962).

Whether exception granted within Board's jurisdiction. — Whether an exception should be granted for a particular piece of property is within the jurisdiction of the Board of Zoning Adjustment, subject to certain limitations. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

Exception need not be granted, even if the requirements specified in the zoning regulation are met. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Nor must exception be necessarily denied. — A zoning regulation which permits the construction of office buildings and banks in a certain residential area if certain conditions are satisfied does not direct the preservation of the residential character of the area. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Burden of showing conditions warranting exception. — The property owner who appeals for an exception under the zoning law and regulations has the burden of showing existence of conditions warranting the granting of such an exception. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Hearsay evidence may be admitted in administrative hearing with respect to granting exception to a zoning regulation. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

Parties protesting exception entitled to notice and opportunity to present evidence. — The parties protesting the granting of an exception are entitled to be given official notice of the exact plans that the Board of Zoning Adjustment will ultimately consider and must be accorded full opportunity to present

evidence. *Robey v. Schwab*, 307 F.2d 198 (D.C. Cir. 1962).

Jurisdiction to review Commission's actions. — The fact that the parties who are claiming that the Zoning Commission acted arbitrarily and illegally file a motion for reconsideration with the Commission does not defeat judicial jurisdiction to review the Commission's action where there is no likelihood of favorable action by the Commission. *Ruppert v. Washington*, 366 F. Supp. 683 (D.D.C. 1973).

Parties who withdraw from hearing cannot raise evidence issues on appeal. — Where the parties urging rejection of an application for a planned unit development withdraw from participation in the Zoning Commission hearing, they cannot complain on appeal that they were denied the right to present evidence, cross-examine witnesses, and to make arguments. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Scope of judicial review of the actions of the Commission is very narrow, and the court may not set aside an action of the Commission merely because it might have decided another way. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

In reviewing a refusal by the Zoning Commission to enact an interim amendment to a zoning ordinance, the appellate court will consider only whether the Commission acted arbitrarily and capriciously, i.e., whether its decision had no substantial relationship to the general welfare. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Court has no right to substitute its judgment for that of Zoning Commission where nothing appears to indicate that the Commission's action was unreasonable or arbitrary. *Salzer v. McLaughlin*, 240 F.2d 891 (D.C. Cir. 1957).

Nor is it required to hold a trial de novo. *Ruppert v. Washington*, 366 F. Supp. 686 (D.D.C. 1973), aff'd, 543 F.2d 416, 417, 177 (D.C. Cir. 1976).

Actions of the Zoning Commission are entitled to a presumption of validity; however, the Commission must put forward, or the court must be otherwise able to discern, some basis in fact and law to justify the action as reasonable. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Court has duty to assure Commission's proceedings fair. — A court reviewing a decision of the Zoning Commission has the duty to assure that the proceedings before the Commission were essentially fair. *Ruppert v.*

Washington, 366 F. Supp. 686 (D.D.C. 1973), *aff'd*, 543 F.2d 416 (D.C. Cir. 1976).

Action to review Board's decision differs from action to review Commission's order.

— An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in that the latter involves the question of whether the property has been taken without due process of law. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

Scope of judicial review of Board's decision. — The court considers the Zoning Board's findings and determinations and will not substitute its judgment so long as there is a rational basis for the Board's opinion. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847 (D.C. Cir. 1971).

Where the decision of the Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Generally, the correctness or incorrectness of a decision of the Board of Zoning Adjustment is not one for judicial review if there is substantial evidence to support it and the parties have been accorded due process of law. *Jarrott v. Schivener*, 225 F. Supp. 827 (D.D.C. 1964).

The court can set aside an action of the Board of Zoning Adjustment in denying an exception to the zoning regulations if it finds that its decision was arbitrary or capricious. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

In reviewing the Board of Zoning Adjustment's interpretation of a regulation, a court must uphold that administrative ruling if it is neither clearly erroneous nor inconsistent with the zoning regulations as a whole or the Zoning Enabling Act of 1938. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 428 A.2d 356 (1981).

Ordinarily, review limited to evidence before Board. — Ordinarily, the review of a decision of the Board of Zoning Adjustment is limited to the Board's record of the proceedings

before it, and the court will not be permitted to hear evidence *dehors* that record. *Jarrott v. Schivener*, 225 F. Supp. 827 (D.D.C. 1964).

In an action to set aside an order denying an application for the establishment of a building, judicial review must be had solely on the record before the Zoning Board and evidence not introduced before the Board, but presented to the court in the 1st instance, will not be considered. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

But where integrity of decision is questioned, court can go outside the record and receive independent evidence. *Jarrott v. Schivener*, 225 F. Supp. 827 (D.D.C. 1964).

Refusal to grant exception found unreasonable. — In the absence of evidence that a conversion of a building would any more adversely affect the present character and future development of the neighborhood than do other uses permitted of other properties in the same area, and in the absence of evidence that such a use would render less desirable, for residential purposes, other property used as such in the same area, a refusal to grant an exception is without reasonable foundation and constitutes a manifest abuse of discretion. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Authority not exceeded. — The Commission did not exceed its authority in approving a planned unit development application which included an off-site housing amenity in the nearby neighborhood. *Blagden Alley Ass'n v. Zoning Comm'n*, App. D.C., 590 A.2d 139 (1991).

Cited in *Wolpe v. Poretsky*, 154 F.2d 330 (D.C. Cir.), *cert. denied*, 329 U.S. 724, 67 S. Ct. 69, 91 L. Ed. 627 (1946); *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), *cert. denied*, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

§ 5-414. Zoning regulations — Purpose [Charter Provision].

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would

tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein. (June 20, 1938, 52 Stat. 797, ch. 534, § 2; 1973 Ed., § 5-414; Dec. 24, 1973, 87 Stat. 810, Pub. L. 93-198, title IV, § 492(b)(1).)

Charter provision. — Part of the first sentence of this section of the D.C. Code is § 492(b)(1) of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to comprehensive plan for national capital, see § 1-2003.

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Exclusive responsibility of Zoning Commission. — The Zoning Commission is the exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with the District's comprehensive plan. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

Commission has ample statutory authority for fixing minimum width and sizes of residential lots. *Salver v. McLaughlin*, 240 F.2d 891 (D.C. Cir. 1957).

Purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

Adoption of comprehensive plan and promulgation of regulations may be single act. — The adoption of a comprehensive plan and the promulgation of regulations, accompanied by a citywide map, may all be a single act, providing the entire city is zoned on a comprehensive basis. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

Meaning of "comprehensive plan" prior to 1973. — "Comprehensive plan," as used in this section, does not refer to the comprehensive land use plan which the National Capital Planning Commission is charged with preparing by § 1-2003, but refers to the Commission's obligation to zone on a uniform and comprehensive basis. *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402 (D.C. Cir. 1973).

Applicability of 1973 amendment to zon-

ing amendment. — Where, following an amendment of the zoning map, but prior to appellate review, this section was amended to require that maps and amendments not be inconsistent with the comprehensive plan for the national capital, the amended law is to be applied and the zoning amendment must be examined for conformity to this comprehensive plan. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Present meaning of "comprehensive plan". — Under this section, the only comprehensive plan with which zoning must be consistent is the plan to be adopted pursuant to § 1-2002(a), relating to the National Capital Planning Commission. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Although the comprehensive plan for the national capital has not yet been published, Congress did not intend that until publication a plan prepared by the National Capital Planning Commission in 1968 (when it still retained total authority for land use planning in the District) should control. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Comprehensive plan not existent. — The District of Columbia presently does not have the comprehensive plan anticipated by this section. *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979).

National capital plan not prerequisite for zoning activities. — No time limit is set for preparation of the comprehensive plan for the national capital under § 1-2002, nor is there a moratorium upon zoning activities until the plan is in effect. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Proper standard for zoning until plan adopted. — Since the plan for the national capital to be adopted pursuant to § 1-2002(a) had not yet been published, compliance with the comprehensive plan provision of this section required solely that the Commission zone on a uniform and comprehensive basis. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Illegal "spot zoning". — Until such time as the District of Columbia adopts a comprehen-

sive plan, to constitute illegal "spot zoning" the Board's action "must be inconsistent ... with the character and zoning of the surrounding area." *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 291 (1979).

Weight given Planning Commission's commentary. — The Zoning Commission must accord substantial weight and respect to the National Capital Planning Commission's statutorily authorized commentary on proposed maps and regulations and amendments to the comprehensive plan. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Requirements for reclassification of particular parcels. — This section does not require the Commission to find evidence that the character of a zoning district has substantially changed since promulgation of the zoning map in order to reclassify a particular parcel within the district. *Rock Creek E. Neighborhood League, Inc. v. District of Columbia Zoning Comm'n*, App. D.C., 388 A.2d 450 (1978).

Zoning Board need not consider section's purposes as adjudicatory standards in granting exception. — In respect to an application for an exception, refusal by the Zoning Board to consider the purposes set forth in this section as adjudicatory standards is not plainly erroneous or inconsistent with the relevant statutes or regulations. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 343 A.2d 564 (1975).

Commission represents nonintervening adjoining property owners. — In a suit to enjoin the members of the Zoning Commission

from carrying into effect a zoning order, the Commission, in the absence of an intervention by the adjoining property owners, sufficiently represents the owners' interests, so that a decree setting aside the order is binding upon them. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

But such owners entitled to intervene. — Where the adjoining property owners are not parties to a suit to enjoin the Zoning Commission from carrying into effect a zoning order and the Commission fails to appeal from the final decree enjoining enforcement, the owners are entitled as a matter of right to intervene in the proceeding. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

Suit to enjoin a zoning order is not an appeal on the merits of the issues presented to the Commission, and, hence, the court should not substitute its judgment for that of the Commission, even for reasons which appear most persuasive. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

Court has no right to substitute its judgment for that of Commission, and where nothing appears to indicate that the Commission's action is unreasonable or arbitrary, the court cannot enjoin enforcement of the regulation. *Salter v. McLaughlin*, 240 F.2d 891 (D.C. Cir. 1957).

Cited in *Schneider v. District of Columbia Zoning Comm'n*, App. D.C., 383 A.2d 324 (1978); *American Univ. Park Citizens Ass'n v. Burka*, App. D.C., 400 A.2d 737 (1979); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1989 (Super. Ct.).

§ 5-415. Same — Existing regulations continued; public hearing on amendments required; notice.

[The regulations prior to June 20, 1938, adopted by the Zoning Commission under the authority of § 5-412 and in force on June 20, 1938, including the maps which at said date accompany and are a part of such regulations, shall be deemed to have been made and adopted and in force under §§ 5-413 to 5-432 and shall be and continue in force and effect until and as they may be amended by the Zoning Commission as authorized by said §§ 5-413 to 5-432.]

[The Zoning Commission may from time to time amend the regulations or any of them or the maps or any of them.] Before putting into effect any amendment or amendments of said regulations, or of said map or maps, the Zoning Commission shall hold a public hearing thereon. At least 30 days notice of the time and place of such hearings shall be published at least once in a daily newspaper or newspapers of general circulation in the District of Columbia. Such published notice shall include a general summary of the proposed amendment or amendments of the regulation or regulations and the boundaries of the

territory or territories included in the amendment or amendments of the map or maps, and the time and place of the hearing. The Zoning Commission shall give such additional notice of such hearing as it shall deem feasible and practicable. At such hearing it shall afford any person present a reasonable opportunity to be heard. Such public hearing may be adjourned from time to time and if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published. (June 20, 1938, 52 Stat. 798, ch. 534, § 3; 1973 Ed., § 5-415.)

Cross references. — As to establishment of parking facilities, see § 40-807.

Section references. — This section is referred to in §§ 5-413, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, 5-432, and 40-807.

The comprehensive plan does not displace existing statutory law which plainly mandates that zoning regulations and maps already in place continue to have the full force and effect of law until such time as the Zoning Commission shall amend them. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

Property owner has no right to a particular zoning classification of his property; thus, a hearing upon his proposed zoning map amendment before its denial is not constitutionally required. *W.C. & A.N. Miller Dev. Co. v. District of Columbia Zoning Comm'n*, App. D.C., 340 A.2d 420 (1975).

One purpose of a zoning hearing is to explore limitations with respect to floor area ratios or lot occupancies. *Aquino v. Tobriner*, 298 F.2d 674 (D.C. Cir. 1971).

Notice requirements imposed on Zoning Commission prior to hearing on proposed regulatory action. — The 3 notice requirements with which the Zoning Commission must comply prior to a hearing on proposed regulatory action are: (1) Section 1-1506(a); (2) this section; and (3) Zoning Commission Rule 3.411. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 461 A.2d 1049 (1983).

Notice and hearing not required if zoning designation is not final order. — A designation of zoning by the Zoning Commission which does not act as a final order of rezoning does not require the notice and hearing prescribed by this section. *DuPont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 426 A.2d 327 (1981).

Additional notice matter of Commission's discretion. — The requirement that the Commission give notice in addition to pub-

lication is not mandatory, but whether and what kind of added notice will be given in a particular case is in the discretion of the Commission. *Aquino v. Tobriner*, 298 F.2d 674 (D.C. Cir. 1961).

And discretion not abused where additional notice not feasible and practical. — The Commission's failure to give additional notice beyond publication is not an abuse of discretion in the absence of a showing that the additional notice was feasible and practical, particularly where the hearing is attended by considerable publicity. *Aquino v. Tobriner*, 298 F.2d 674 (D.C. Cir. 1961).

Opportunity to be heard denied where only 2 Commission members attend hearing. — A landowner who objects to a rezoning of adjoining property is not afforded his statutory right to a reasonable opportunity to be heard where only 2 of the 5 members of the Zoning Commission attend the public hearing to hear protests against the rezoning. *Allen v. Zoning Comm'n*, 449 F.2d 1100 (D.C. Cir. 1971).

Right to hearing does not confer "contested case" status. — The statutory right to a hearing afforded by this section does not in and of itself confer "contested case" status on hearings conducted by the Zoning Commission. *Schneider v. District of Columbia Zoning Comm'n*, App. D.C., 383 A.2d 324 (1978).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and developers which occurred between the closing of the record and issuance of the Commission's final orders did not violate due process or the requirements of the Administrative Procedure Act (§ 1-1501 et seq.). *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Proceedings before Commission legislative in character. — When the Zoning Commission denies without a public hearing a proposed amendment to the zoning maps to change a zoning classification of certain property, the Commission is acting legislatively and such a decision is not subject to direct appellate review. *W.C. & A.N. Miller Dev. Co. v.*

District of Columbia Zoning Comm'n, App. D.C., 340 A.2d 420 (1975).

Cited in *Gerstenfeld v. Jett*, 374 F.2d 333 (D.C. Cir. 1967); *Lee v. District of Columbia Zoning Comm'n*, App. D.C., 411 A.2d 635

(1980); *Interdonato v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1000 (1981); *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

§ 5-416. Same — Vote required for amendment.

Any amendment of the regulations or any of them or of the maps or any of them shall require the favorable vote of not less than a full majority of the members of the Commission. (June 20, 1938, 52 Stat. 798, ch. 534, § 4; 1973 Ed., § 5-416.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Opportunity to be heard denied where only 2 Commission members attend protest hearing. — A landowner who objects to a

rezoning of adjoining property is not afforded his statutory right to a reasonable opportunity to be heard where only 2 of the 5 members of the Zoning Commission attend the public hearing to hear protests against the rezoning. *Allen v. Zoning Comm'n*, 449 F.2d 1100 (D.C. Cir. 1971).

§ 5-417. Same — Proposed regulations or amendments; public hearing; notice; National Capital Planning Commission [Charter Provision].

(a)(1) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission:

(A) Has held a public hearing, after notice, on such proposed regulation, map, or amendment; and

(B) After such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review.

(2) If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within 30 days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

(b) The notice required by subparagraph (A) of paragraph (1) of subsection (a) of this section shall be published at least 30 days prior to such public hearing and shall include a statement as to the time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto,

adopted by it. (June 20, 1938, 52 Stat. 798, ch. 534, § 5; 1973 Ed., § 5-417; Dec. 24, 1973, 87 Stat. 810, Pub. L. 93-198, title IV, § 492(b)(2).)

Charter provision. — This section of the D.C. Code is § 492(b)(2) of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Section references. — This section is referred to in §§ 1-2006, 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Transfer of functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" throughout this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Public input requirements met. — The requirements under this section and § 1-1506 that interested members of the public have a reasonable opportunity to comment and submit data in support of or in opposition to proposed regulations was met by holding 4 days of hearings and permitting a substantial period for submission of written comments. *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Weight given Planning Commission's comments. — The Zoning Commission must accord substantial weight and respect to the National Capital Planning Commission's statutorily authorized commentary on proposed maps and regulations and amendments to the comprehensive plan. *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, App. D.C., 380 A.2d 174 (1977), overruled on other grounds, App. D.C., 392 A.2d 1027 (1978).

Environmental policies delineated in federal provisions should find expression in zoning process. — Although the Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications for planned unit developments or for amendments of zoning maps and regulations, the environmental policies delineated in the national Environmental Policy Act should find expression in the planning and zoning process in the District. *McLean Gardens Residents Ass'n v. National Capital Planning Comm'n*, 390 F. Supp. 165 (D.D.C. 1974).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and developers which occurred between the closing of the record and issuance of the Commission's final orders did not violate due process or the requirements of the Administrative Procedure Act (§ 1-1501 et seq.). *Citizens Ass'n v. Zoning Comm'n*, App. D.C., 392 A.2d 1027 (1978).

Court has no right to substitute its judgment for that of Zoning Commission, and where nothing appears to indicate that the Commission's action is unreasonable or arbitrary, the court cannot enjoin enforcement of the regulation in question. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

A court may not substitute its judgment for that of the Zoning Commission and may not set aside the Commission's action unless it is clearly arbitrary, unreasonable, and has no substantial relation to the general welfare. *Association for Preservation of 1700 Block of N. St. v. Duke*, 356 F.2d 344 (D.C. Cir. 1966).

Cited in *Shenk v. Zoning Comm'n*, 440 F.2d 295 (D.C. Cir. 1971); *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, App. D.C., 402 A.2d 36 (1979); *Page Assocs. v. District of Columbia*, App. D.C., 463 A.2d 649 (1983).

§ 5-418. Permissible maximum height of buildings.

The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by §§ 5-401 to 5-409, regulating the height of buildings in the District of Columbia. (June 20, 1938, 52 Stat. 798, ch. 534, § 6; Oct. 13, 1964, 78 Stat. 1091, Pub. L. 88-659, § 1; 1973 Ed., § 5-418; Aug. 24, 1982, 96 Stat. 273, Pub. L. 97-241, § 203(c).)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-421, 5-422, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Effective dates. — Section 204 of Public Law 97-241 provided that the amendments made by Title II shall take effect on October 1, 1982.

Section is a special exception provision to be read into the zoning regulations. Sheridan-Kalorama Neighborhood Council v.

District of Columbia Bd. of Zoning Adjustment, App. D.C., 411 A.2d 959 (1979).

Law offices and chanceries are permitted as of right in special purpose district. Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 411 A.2d 959 (1979).

Cited in Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106 (D.D.C. 1986); Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

§§ 5-419, 5-420. Existing chanceries; applicability of subsections (b) through (e) of § 5-418.

Omitted.

Editor's notes. — Former §§ 5-419 and 5-420 contained provisions regarding the construction and applicability of former subsections (b) through (e) of § 5-418. Subsections (b)

through (e) of § 5-418 were repealed by Pub. L. 97-241 and §§ 5-419 and 5-420 were omitted based upon the repeal of those subsections.

§ 5-421. Transfer or use of chancery.

After October 13, 1964, no building or chancery being used by a foreign government in the District of Columbia shall be transferred to or used by another foreign government unless such use is in accordance with § 5-418, as amended, or paragraph (1) of § 5-419 or unless such use was in accordance with applicable law on October 13, 1964. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88-659, § 4; July 21, 1968, 82 Stat. 396, Pub. L. 90-412, § 1(b); 1973 Ed., § 5-418c.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-422, 5-423, 5-424, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

References in text. — The reference to "§ 5-418, as amended, or paragraph (1) of

§ 5-419" encompasses certain obsolete references: Subsections (b) through (e) of § 5-418 were repealed by Pub. L. 97-241, and § 5-419 was omitted based upon the repeal of those subsections.

§ 5-422. Discrimination against foreign government based on race, color, or creed prohibited.

Sections 5-418 to 5-422 shall not be administered in such a way as to discriminate against any foreign government on the basis of the race, color, or creed of any of its citizens. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88-659, § 5; 1973 Ed., § 5-418d.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

References in text. — The reference to "Sections 5-418 to 5-422" at the beginning of

this section encompasses certain obsolete references: Subsections (b) through (e) of § 5-418 were repealed by Pub. L. 97-241, and §§ 5-419 and 5-420 were omitted based upon the repeal of those subsections.

§ 5-423. Nonconforming use.

The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of § 5-412, or, in the case of any regulation adopted after June 20, 1938, under §§ 5-413 to 5-432, at the time of such adoption, may be continued although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected. The Zoning Commission may in its discretion provide, upon such terms and conditions as may be set forth in the regulations, for the extension of any such nonconforming use throughout the building and for the substitution of nonconforming uses. (June 20, 1938, 52 Stat. 798, ch. 534, § 7; 1973 Ed., § 5-419.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Section is binding on the Zoning Commission and if a party can show a prior nonconforming use, he is entitled to a certificate of occupancy. *Hagans v. District of Columbia*, App. D.C., 97 A.2d 922 (1953).

Nonconforming uses are not favored and must be regulated strictly so that the goals of the districting scheme established by the Zoning Commission are not undercut. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982).

Any interpretation of zoning regulations which expands the prerogatives of nonconforming users is undesirable. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982).

"Nonconforming use" defined. — A "nonconforming use," within the meaning of this section, refers to a permitted continued use of a structure for a purpose lawful under the zoning law at the time of initiation of that use, but not so under subsequently adopted changes in the zoning law. *Massachusetts Ave. Heights Citizens Ass'n v. Embassy Corp.*, 433 F.2d 513 (D.C. Cir. 1970).

A nonconforming use is an exception to generally applicable zoning requirements for a previously lawful, existing use. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Recognition of nonconforming uses to protect property owners. — The government recognizes nonconforming uses in derogation of the general zoning scheme in order to protect the interests of property owners. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Right to nonconforming use generally

runs with land. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Lease may provide for reasonable nonconforming use. — A provision in a lease which requires that the tenant use the basement for commercial purposes is a reasonable one in a residential area and the landlord has the right to insist that this use be maintained. *Amos v. Cummings*, App. D.C., 67 A.2d 87 (1949).

Continuance of prior nonconforming use. — Where a building which is equipped as a stable is used for the nonconforming use of buying and selling horses, a subsequent use of the premises for keeping horses for rent and boarding horses for others is a continuance of the prior nonconforming use. *Wood v. District of Columbia*, App. D.C., 39 A.2d 67 (1944).

Proof required for continuance of nonconforming use. — To gain continuation of a nonconforming use, a petitioner must establish at the administrative level that his use existed at the time of the enactment of the restrictive zoning regulations, that it was a lawful use at that time, and that it was a use entitled to be protected and preserved. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982).

Party asserting right to continuance of nonconforming use must carry burden of proof. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982).

Accessory use cannot become basis for principal nonconforming use. — At the time restricting zoning regulations are adopted, an accessory use, a use incidental to the principal use and located on the same lot, cannot become the basis for a principal nonconforming use. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982).

Intent to preserve nonconforming use

manifested by reconstruction. — Reconstruction to accommodate a new nonconforming use pursuant to Board of Zoning Adjustment approval manifests an intent to preserve, not give up, nonconforming use. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Owner not deprived of nonconforming use by lapse of time without active pursuit. — The mere lapse of time without active pursuit of a nonconforming use does not deprive the owner of that right. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Abandonment of nonconforming use. — The discontinuance of a nonconforming use results from a concurrence of the intent to abandon with some overt act or failure to act which carries the implication of abandonment. *Wood v. District of Columbia*, App. D.C., 39 A.2d 67 (1944).

The fact that a building which has been used for a nonconforming use has been vacant for a number of years does not establish an abandonment of the nonconforming use, where the building has been retained in the same condition and has been advertised for lease as a nonconforming building. *Wood v. District of Columbia*, App. D.C., 39 A.2d 67 (1944).

If an owner evidences his rejection of the protection afforded to previously lawful, though presently nonconforming, existing uses by discontinuing a nonconforming use, he abandons his right to that exemption and thereafter must comply with general zoning requirements. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Obedience to government orders is not an act indicative of an intent to abandon a nonconforming use. *George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 429 A.2d 1342 (1981).

Structural alteration of nonconforming use. — A change of a fenced-in structure to a structure completely enclosed by 4 sides and a roof constitutes a structural alteration within the meaning of this section. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), aff'd, 346 F.2d 834 (D.C. Cir. 1965).

This section makes clear that nonconforming uses may be continued only if no structural alteration or enlargement is made, or new building erected. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 428 A.2d 356 (1981).

Term "enlargement" applies to buildings, not conforming uses. *Lenkin v. District*

of Columbia Bd. of Zoning Adjustment, App. D.C., 428 A.2d 356 (1981).

Property inspection constitutes "step taken" by Adjustment Board for purposes of docket entry. — An inspection of the property for which a building permit is sought by the Zoning Board of Adjustment constitutes a "step taken" or "act done" by the Board and must be entered in the Board's docket. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), aff'd, 346 F.2d 834 (D.C. Cir. 1965).

And building permit applicant given chance to rebut resultant findings. — The purpose of the zoning regulation which gives the applicant for a building permit the chance to make a rebuttal after an administrative officer or any interested property owners or other interested persons have stated their side of the case is to give the applicant an opportunity to rebut any findings made as the result of the inspection of his property. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), aff'd, 346 F.2d 834 (D.C. Cir. 1965).

Failure to permit applicant to rebut evidence unconstitutional. — The failure to permit the applicant for a building permit to question and rebut any evidence gathered at any inspection of his property by the Board of Zoning Adjustment and to make the inspection itself a matter of record is a denial of due process. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), aff'd, 346 F.2d 834 (D.C. Cir. 1965).

In prosecution for conducting business without license, defendant must prove nonconforming use. — In a prosecution for engaging in a business without first having obtained a license, if the defendant wishes to rely on this section as a defense, the burden is on him to prove a nonconforming use. *Hagans v. District of Columbia*, App. D.C., 97 A.2d 922 (1953).

But wrongful refusal to issue business license conveys no right to continue business. — Even if a refusal by the Zoning Commission to issue a business license is wrongful, the applicant has no right to continue the business without a license. *Hagans v. District of Columbia*, App. D.C., 97 A.2d 922 (1953).

Zoning Adjustment Board has authority to grant a variance altering a nonconforming use, including a creation of an "enlargement," if the other applicable criteria of § 5-424(g)(3) are met. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 409 A.2d 1067 (1979).

Cited in Page Assocs. v. District of Columbia, App. D.C., 463 A.2d 649 (1983).

§ 5-424. Board of Zoning Adjustment.

(a) A Board of Zoning Adjustment is hereby created which shall be composed of 1 member of the National Capital Planning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; 1 member of the Zoning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; and 3 other members appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia, each of whom shall have been a resident of the District of Columbia for at least 3 years immediately preceding his appointment and at least 1 of whom shall own his own home.

(b) The representative of the National Capital Planning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The representative of the Zoning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The terms of the 3 members designated by the Mayor of the District of Columbia shall be 3 years each, excepting that, in the case of the initial appointments, 1 shall be for a term of 1 year and 1 for a term of 2 years. In case of any vacancy in the position of any of the 3 members designated by the Mayor of the District of Columbia, the same shall be filled for the remainder of the term.

(c) The Zoning Commission may provide and specify in its zoning regulations general rules to govern the organization and procedure of the Board of Adjustment not inconsistent with the provisions of §§ 5-413 to 5-432, and the Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in § 5-415. The Board of Adjustment shall choose its Chairman and its other officers. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(d) The regulations adopted by the Zoning Commission may provide that the Board of Adjustment may in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. The Commission may also

authorize the Board of Adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

(e) The Board of Adjustment shall not have the power to amend any regulation or map.

(f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under §§ 5-413 to 5-432. The Mayor of the District of Columbia may require and fix the fee to be charged for an appeal, which fee shall be paid, as directed by said Mayor, with the filing of the appeal; provided, that no citizens' association, or association created for civic purposes and not for profit shall be required to pay said fee. There shall be a public hearing on appeal.

(g) Upon appeals the Board of Adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Mayor of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to §§ 5-413 to 5-432;

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such Board is required or authorized by the regulations to pass;

(3) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under §§ 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map;

(4) In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of §§ 5-413 to 5-432, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.

(h) The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order.

(i) Nothing herein contained shall prohibit the Zoning Commission from providing by regulation for appeals to it from any action of the Board of Zoning Adjustment. (June 20, 1938, 52 Stat. 799, ch. 534, § 8; 1973 Ed., § 5-420; Feb. 24, 1987, D.C. Law 6-191, § 2, 33 DCR 7939a.)

Section references. — This section is referred to in §§ 1-1462, 5-413, 5-415, 5-423, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Legislative history of Law 6-191. — Law 6-191, the "Board of Zoning Adjustment Confirmation Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-493, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor of November 25, 1986, it was assigned Act No. 6-242 and transmitted to both Houses of Congress for its review.

Delegation of authority under Zoning Act. — See Mayor's Order 83-165, June 7, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in subsection (a) and in the first sentence in subsection (b) of this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Office of Inspector of Buildings abolished. — Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the In-

spector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

Authority to interpret zoning regulations. — Board of Zoning Adjustment, not the Zoning Administrator, has final administrative responsibility to interpret the zoning regulations. *Murray v. District of Columbia Bd. of*

Zoning Adjustment, App. D.C., 572 A.2d 1055 (1990).

Sole authority for any amendment of a zoning regulation is in Zoning Commission, not the Board of Zoning Adjustment. *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 337 A.2d 495 (1975).

Board is without any direct or indirect power to amend a zoning map or regulations. *Taylor v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 308 A.2d 230 (1973).

Matters of discretion for Zoning Commission. — Whether mistakes were made in locating the boundaries of a commercial district and whether, on a change of character of the neighborhood, a certain street should be reclassified, are matters of discretion for the Zoning Commission. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 224 (D.D.C. 1964).

Matters of discretion for Board. — Greater discretion is vested in the Board in granting or denying a variance than there is in determining whether an error had been committed by any official, particularly where the alleged error is one involving statutory interpretation. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), *aff'd*, 346 F.2d 834 (D.C. Cir. 1965).

The Board has the discretion to fashion its policies in any way that is not inconsistent with the zoning regulations. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 428 A.2d 356 (1981).

"Permitted," as used in Board's regulations, defined. — Whenever "permitted" is used in the Board's regulations unqualifiedly, it means permitted in the broad sense of the word, i.e., permitted either as of right or by special exception. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 411 A.2d 959 (1979).

Restaurant has right to continue non-conforming use. — A restaurant has the statutory right to continue utilizing the same floor and land area utilized at the time use becomes nonconforming. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), *aff'd*, 346 F.2d 834 (D.C. Cir. 1965).

And to invoke right to erect legally required building. — A property owner seeking a building permit to erect a utility building adjacent to his restaurant, as required by law, should not invoke hardship but his clear statutory right to erect the structure. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), *aff'd*, 346 F.2d 834 (D.C. Cir. 1965).

In which case, complaints of neighbors immaterial. — Any complaints on the part of neighbors to noise or other disturbances are

wholly immaterial where an application for a permit is filed to build a structure required by law. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), *aff'd*, 346 F.2d 834 (D.C. Cir. 1965).

Obstructed nearby property owner has standing to complain. — Where a structure obstructs a nearby street, a property owner near that street has standing to complain as an intervenor in proceedings before the Board. *Hilton Hotels Corp. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 363 A.2d 670 (1976), *aff'd*, App. D.C., 435 A.2d 1062 (1981).

Single section of community should not bear disproportionate environmental burdens. — No one section of the community should have to bear a disproportionate share of the environmental burden which halfway houses and social service centers necessarily impose upon neighboring property. *Hubbard v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 366 A.2d 427 (1976).

Failure to exhaust administrative remedies leads to denial of injunction. — It is improper to determine the merits and to issue a permanent injunction against a particular property use without requiring a recourse, under the doctrine of primary jurisdiction, to the administrative remedies available to the parties. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847 (D.C. Cir. 1971).

Aggrieved party may seek exception. — A party aggrieved by a classification of the Zoning Commission may be able to seek an exception before the Board. *Gerstenfeld v. Jett*, 374 F.2d 333 (D.C. Cir. 1967).

"Exception" defined. — An "exception" in a zoning ordinance is allowed where the facts and conditions detailed in the ordinance, as those upon which an exception may be permitted, are found to exist. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Application for master plan constitutes request for necessary exceptions. — A university's application which ostensibly seeks only an approval of a master plan constitutes a request for all the exceptions necessary to permit the uses enumerated in the plan, to the extent that evidence is introduced in support of exceptions. *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 365 A.2d 372 (1976).

Board must decide whether exception sought meets requirements set forth in the regulation and this decision must result from the exercise of legal discretion and must not be arbitrary, capricious, or unreasonable. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

The Board may exercise its discretion to grant an exception only where, in its judgment, the exception sought is in accord with the purpose of the zoning regulations. *Rose Lees Hardy Home & School Ass'n v. District of Co-*

lumbia Bd. of Zoning Adjustment, App. D.C., 324 A.2d 701 (1974), *aff'd*, App. D.C., 343 A.2d 564 (1975).

But Board not required to grant exception for illegal use. — The Board is not required, through a liberal interpretation of a zoning regulation, to carve out a special exception to legalize a use which is presently, and has been since its inception, illegal. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 376 A.2d 816 (1977).

And Board subject to directives and guidelines. — The Board, being a creature of statute, with discretionary and fact-finding authority, may not exercise its discretion in an arbitrary manner, but rather is subject to statutory and regulatory directives and guidelines. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 324 A.2d 701 (1974), *aff'd*, App. D.C., 343 A.2d 564 (1975).

Although it need not consider § 5-414's purposes as adjudicatory standards. — In respect to an application for an exception, the refusal by the Board to consider the purposes set forth in § 5-414 as adjudicatory standards is not plainly erroneous or inconsistent with the relevant statutes or regulations. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 343 A.2d 564 (1975).

Exception need not be granted, even if the requirements specified in the zoning regulation are met. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Nor must exception be necessarily denied. — A zoning regulation which permits the construction of office buildings and banks in a certain residential area if certain conditions are satisfied does not direct the preservation of the residential character of the area. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Factors considered in residential parking lot determination. — Whether a use of an unimproved lot in a residential district as a parking lot will interfere "unreasonably" with the use of neighborhood properties under the zone plan can only be determined in light of all circumstances, and these include the existence of a critical parking problem. *Selden v. Capitol Hill S.E. Citizens Ass'n*, 219 F.2d 33 (D.C. Cir. 1954).

Factors considered in residential university determination. — Grant of an exception to permit a university in a residential district cannot stand where the Board fails to find that it is not likely that noise, traffic, number of students, and other conditions generated by the university's presence will become objectionable to neighboring property owners. *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 365 A.2d 372 (1976).

Economic feasibility a factor to consider.

— Economic feasibility may be considered in deciding whether area variances should be granted. *Tyler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 606 A.2d 1362 (1992).

Use of prior positions by Board. — While the Board is not bound for all time by its prior positions, it should consider any long-standing interpretations of zoning regulations which it has approved in the past. *Smith v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 342 A.2d 356 (1975).

Refusal to consider greater income not error in rezoning decision. — Evidence of greater income from certain property if it is rezoned does not establish any abuse in the Commission's action in declining to rezone. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

Purpose of variance procedure. — The variance procedure specified in this section is designed to provide relief from the strict letter of zoning regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights, and prevent usable land from remaining idle. *Palmer v. Board of Zoning Adjustment*, App. D.C., 287 A.2d 535 (1972).

A general reliance on the "purpose and intent" of the zoning plan cannot substitute for compliance with the purposely stringent requirements for a variance. *Myrick v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 577 A.2d 757 (1990).

Unique circumstances must support variance. — To support a variance, the difficulties or hardships must be due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood. *Palmer v. Board of Zoning Adjustment*, App. D.C., 287 A.2d 535 (1972).

Property was unique. — Board's finding of uniqueness based on the existence of particular easements was supported by substantial evidence in the record and was neither arbitrary nor capricious. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 579 A.2d 1164 (1990).

Property was not unique. — Neither the property's situation in an historic district nor the evidence justified a finding that the property was unique and intervenor failed to meet the first requirement for a variance. *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 939 (1987).

Evidence was insufficient to support a finding of uniqueness despite narrowness of the lot and the fact that the structure had been in existence for more than 100 years, as there was nothing in the record to indicate that this was not the case for any other home in the area.

Myrick v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 577 A.2d 757 (1990).

Hardship must uniquely affect petitioner's property. — To show that property is unique under subsection (g)(3) means the property owner must present proof that the circumstances which create the hardship uniquely affect the petitioner's property. Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 939 (1987).

Where the circumstances which create the hardship or difficulty affect the entire neighborhood rather than merely a specific piece of property, the problem is properly addressed by seeking amendment of the regulations from the Zoning Commission. Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 939 (1987).

Circumstances affecting whole area remedied by zoning amendment. — If there are circumstances which affect the whole area, the proper remedy is to seek an amendment of the zoning regulation rather than a variance as to a particular parcel. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

Past zoning history of parcel can be taken into account in uniqueness facet of the variance test. Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 407 A.2d 1091 (1979).

Neighborhood detriment is not a criterion for an authorization of a variance. Salsbery v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 318 A.2d 894 (1974), aff'd, App. D.C., 357 A.2d 402 (1976).

Added expenses alone do not entitle a property owner to a variance. Barbour v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 358 A.2d 326 (1976).

Regulation consistent with section. — A regulation which by use of the disjunctive "or" sets up separate statutory requisites to the granting of variances is consistent with this section. Wolf v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 397 A.2d 936 (1979).

Section and zoning regulation establish dual statutory requisites to the granting of variances, i.e., a showing of "practical difficulties" (for area variances) or "undue hardship" (for use variances). Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 409 A.2d 1067 (1979).

In order to obtain relief from enforcement of the zoning regulations under subsection (g)(3) of this section, an owner must demonstrate that either "practical difficulties" or "undue hardship" exists, which renders enforcement unfair. Lenkin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 428 A.2d 356 (1981).

More stringent showing is required for use variance than for area variance. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

Distinction between criterion for granting variances. — The criterion of "practical difficulties" for granting a variance applies to area variances, while the criterion of "undue hardship" applies to use variances. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

Landowner must meet 3 requirements for a use variance: (1) Property with a unique physical aspect or another "extraordinary or exceptional situation or condition"; (2) undue hardship; and (3) no harm to the public or to the zone plan. Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 407 A.2d 1091 (1979).

Use variance cannot be granted unless reasonable use cannot be made of property in a manner consistent with the zoning regulations. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

Preexisting conditions may justify variance. — The express wording of this section does not limit the circumstances or conditions that can provide a basis for a variance to those that came about subsequent to adoption of the zoning regulations. Gilmartin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 579 A.2d 1164 (1990).

Subsequent conditions may justify variance. — The phrase in paragraph (3) of subsection (g) of this section, "or other extraordinary or exceptional situation or condition of a specific piece of property" empowers the Board to provide variance relief from extraordinary or exceptional conditions brought about after the original adoption of a zoning regulation or inhering in the land itself at that time. De Azcarate v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 388 A.2d 1233 (1978).

The extraordinary or exceptional condition which is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself, although a subsequent event will not invariably support the grant of a variance, particularly if an affirmative act of the applicant is the direct and sole cause of the hardship complained of. De Azcarate v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 388 A.2d 1233 (1978).

Certain "other extraordinary or exceptional situation or condition of a specific piece of property" need not have preceded the promulgation of the zoning regulation. Gilmartin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 579 A.2d 1164 (1990).

Board has the authority to grant a variance altering a nonconforming use, including creating an "enlargement," if the other ap-

plicable criteria are met. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 409 A.2d 1067 (1979).

"Variance" defined in terms of hardship. — A "variance" is an authorization to a property owner to depart from the literal requirements of the zoning regulations in the utilization of his property in cases in which strict enforcement of the zoning regulations would cause undue hardship. *Daniel v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 329 A.2d 773 (1974).

Variances for hardship not restricted to "land" cases. — A grant of a variance on the basis of hardship is not restricted to cases where the required hardship inheres in "land," as opposed to "property." *Clerics of Saint Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 291 (1974).

Inability to use property necessary element in hardship application. — On an application for a variance, necessary element of proof of hardship is evidence showing an inability to make a reasonable disposition of the property for a permitted use. *Clerics of Saint Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 291 (1974).

Hardship which is self-inflicted does not support a grant of a use variance. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 357 A.2d 402 (1976).

Hardship resulting from commercial appropriation no justification for variance. — A hardship not resulting from the location, situation, or condition of the property, but solely from the owner's appropriation of it for commercial purposes without first having obtained the necessary zoning change, is not such a "hardship" as to justify a variance. *Clouser v. David*, 309 F.2d 233 (D.C. Cir. 1962).

Shallowness of lots is a self-imposed hardship which is entitled to only slight weight, if any, in determining whether to grant a variance. *Taylor v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 308 A.2d 230 (1973).

Uncontrollable historical circumstances no basis of self-imposed hardship. — A hardship is not self-imposed where it is not the building of the structure which gives rise to the complained of hardship but historical circumstances beyond the control of the applicant. *Clerics of Saint Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 291 (1974).

Good faith, detrimental reliance relevant in determining hardship. — An applicant's good faith, detrimental reliance on previous zoning actions can be relevant to determine undue hardships, the 2nd branch of the variance test. *Monaco v. District of Columbia Bd.*

of Zoning Adjustment, App. D.C., 407 A.2d 1091 (1979).

Good faith, detrimental reliance on the zoning authorities' informal assurances may be taken into account in assessing an intervenor's undue hardship under the variance law. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (1979).

Board lacks authority to grant variance in order to assure landowner a profit. *Taylor v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 308 A.2d 230 (1973).

Inability to put property to more profitable use, or a loss of economic advantage, is not sufficient to constitute "hardship," such as will warrant granting a use variance. *Palmer v. Board of Zoning Adjustment*, App. D.C., 287 A.2d 535 (1972).

Variance denied where remodeling and renting difficulties constitute hardship. — A denial of a variance to permit an office use is not an error where the only hardship the petitioners are able to point to that peculiarly affects their interest is the cost of remodeling for residential purposes and the anticipated, but unproven, difficulty in renting. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 376 A.2d 816 (1977).

And where property usable for permissible development. — Where the property for which a variance is sought can reasonably be used for a development which is permissible in the District, the exceptional and undue hardship necessary for a grant of a variance does not exist. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 357 A.2d 402 (1976).

And where premises adaptable or rentable. — The inability of the tenant or the owner to use the building as a public hall under existing parking conditions does not constitute a sufficient enough "hardship" to warrant granting a use variance where there is no evidence that the owner cannot reasonably adapt the premises or find a tenant to produce a reasonable income. *Palmer v. Board of Zoning Adjustment*, App. D.C., 287 A.2d 535 (1972).

Burden of showing hardship not met. — Where structure in question, though originally constructed as a flat, was changed in 1950 into a single family dwelling and was utilized as such when the 1958 zoning regulations were adopted, which prohibited flats, and can continue to be used as a single family residence, and is capable of being used in a manner consistent with the zoning regulations, the owners have not met the requisite burden of showing such an extraordinary or exceptional situation or condition that the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owners. *Silverstone v. District of Columbia Bd.*

of Zoning Adjustment, App. D.C., 396 A.2d 992 (1979).

Location and expansion of foreign missions. — Foreign Missions Act provides the exclusive procedure available for consideration of location and expansion of foreign missions and Board of Zoning Adjustment was without jurisdiction to review foreign embassy's application solely under District of Columbia law. Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

Communications facilities for chancery. — Issue of such primary importance as the furnishing of adequate communications facilities to a chancery is subject only to the provisions of the Foreign Missions Act. Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

After applicant has demonstrated uniqueness and undue hardship, he must show 3rd element of the variance test, namely, that the variance will not harm the public or undermine the zone plan. Monaco v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 407 A.2d 1091 (1979).

But Board should not consider 3rd element where hardship not found. — Where the Board rules against authorizing a variance for lack of hardship, it should not consider whether the intended use would have an adverse effect upon the character and development of the neighborhood and would substantially impair the purpose, intent, or integrity of the zoning regulations and maps. Salsbery v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 318 A.2d 894 (1974), *aff'd*, App. D.C., 357 A.2d 402 (1976).

Variance properly granted. — Where owners acted in good faith reliance on the implicit findings of zoning office personnel that their irregular lot conformed to lot width requirements though in fact the lot was not in conformance, the Board properly granted a variance since the lot was unusable for any other purpose, the variance would not substantially harm the public and the hardship to the owners was not the result of any affirmative act on their part. De Azcarate v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 388 A.2d 1233 (1978).

Board to grant an area variance where it finds 3 conditions: (1) The property is unique because, *inter alia*, of its size, shape, or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan. Roumel v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 417 A.2d 405 (1980).

The grant of an area variance is only appropriate where the Board concludes, based on the particular facts of the case, that 3 conditions exist: (1) The property is unique because of size, shape, topography or another extraordinary or exceptional situation or condition; (2) the owner is encountering exceptional practical difficulties as a result of the strict application of the zoning regulation to his particular property; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan. Carliner v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 412 A.2d 52 (1980); Draude v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 527 A.2d 1242 (1987).

Burdensome restrictions must be shown. — Generally, to warrant granting an area variance, it must be shown that compliance with area restrictions would be unnecessarily burdensome. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

Nature and extent of burden is best left to facts and circumstances of case. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

For substandard lot, "peculiar and exceptional difficulties" proved. — Where a substandard lot is the subject of an application for an area variance, proof of "peculiar and exceptional difficulties" is involved. A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 338 A.2d 428 (1975).

But property owner is not required to make stringent showing of an undue hardship with respect to an area variance. Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

Conditions for grant of area variance to public service organization. — Where a public service organization applies for an area variance, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought. Draude v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 527 A.2d 1242 (1987); Draude v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 582 A.2d 949 (1990).

Self-created hardship is not considered in an application for an area variance, as that factor only militates against a use variance. Association For Preservation of 1700 Block of N St., N.W. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 384 A.2d 674 (1978).

Where asserted hardship — the configuration of the existing church structure — was created by the owner itself, it therefore, could not serve as the basis for a variance under this

section according to the "self-created hardship rule". *Foxhall Community Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 524 A.2d 759 (1987).

But difficulties of property owner must be shown. — In the absence of a showing of difficulties experienced by the property owner, financial or otherwise, the granting of an area variance is improper. *Palmer v. Board of Zoning Adjustment*, App. D.C., 287 A.2d 535 (1972).

Greater income not ground for variance. — An area variance cannot be granted on the ground that the property, which produces a reasonable income when conforming to the regulations, will, if put to another use, yield a greater return. *Palmer v. Board of Zoning Adjustment*, App. D.C., 287 A.2d 535 (1972).

But needs of public service with inadequate facilities may be considered. — When a public service has inadequate facilities and applies for a variance to expand into an adjacent area which has long been regarded as part of the same site, the Board does not err in considering the needs of the organization as a possible "other extraordinary and exceptional situation or condition." *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (1979).

Significant factors in determining if inadequate buildings on one parcel may constitute an extraordinary situation for another parcel is whether the 2 parcels are contiguous and under common ownership and whether a building has already been constructed on the adjoining property. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (1979).

Concept of "overcrowding" as basis for finding variance would impair zoning plan. — The concept of "overcrowding," which may be the basis for a finding that the grant of an area variance would substantially impair the zoning plan, is not limited to a determination based solely on the percentage of lot area that a structure occupies, but also refers to the density of the structures located on different lots in a given area. *Roumel v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 417 A.2d 405 (1980).

Area variance proper. — Where the evidence showed that due to the irregular shape of a lot the cost to provide required off-street parking would be extraordinary, the owner had satisfied its burden of showing a practical difficulty sufficient to support the grant of an area variance. *Association For Preservation of 1700 Block of N St., N.W. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 384 A.2d 674 (1978).

Board member may act as advisor to Planning Commission. — The Board's action with respect to a university's application for an

exception is not rendered invalid on the ground that 1 Board member has contact ex parte with the university in his capacity as an advisor to the National Capital Planning Commission. *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 365 A.2d 372 (1976).

Communications between Zoning Commission and Board should be part of public record. — While the channel for communications between the Zoning Commission and the Board may become a conduit for pressures external to the Zoning Commission, which abuse might invalidate a Board decision, such communications, if they do occur, should be made a part of the public record so that interested parties may comment. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 341 A.2d 312 (1975).

As should ex parte letters. — An ex parte letter on the merits of a controversy, addressed to a member of the Board, should be placed in the public record and copies thereof served on the other parties. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 324 A.2d 701 (1974), *aff'd*, App. D.C., 343 A.2d 564 (1975).

And Commission member of Board bound to base vote upon proceedings before Board. — The person designated by the Zoning Commission to represent the Commission on the Board is authorized to express the Commission's concerns and to cast his vote with full knowledge of the attitudes and policy positions of the Commission's members, but he is bound to cast his vote with the Board based exclusively upon the record of the proceedings before the Board. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 341 A.2d 313 (1975).

Ex parte contacts with government officials voids decision. — Where Board members are secretly informed that certain persons in the government want the Board to grant an application for an exception, there is a denial of a fair hearing, and any subsequent decision is void. *Jarrott v. Scrivener*, 225 F. Supp. 827 (D.D.C. 1964).

And applicant not permitted to contact Board ex parte. — A zoning variance applicant is not permitted, in the absence of the parties objecting to the variance and without any notice to them, to urge the Board to consider the same matters previously set forth in a motion for reconsideration denied by the Board. *Wilson v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 289 A.2d 380 (1972).

Board may be required to seek comments from others. — Although the Board may not be required to consider the impact on existing public and private schools in passing

on a request by a religious organization for an exception to allow the construction of a private school in a residential area, the Board commits error in not implementing a preliminary decision to seek "comments" from the Board of Education and in relying on information contained in a letter from an outside party without serving this letter on the parties. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 324 A.2d 701 (1974), *aff'd*, App. D.C., 343 A.2d 564 (1975).

Applicant not entitled to past Board decisions. — An applicant for a certificate of occupancy is not entitled to receive from the Board a list of all past Board decisions. *Legislative Study Club, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 359 A.2d 153 (1976).

Parties in adjudicatory proceedings entitled to fairness. — Parties whose rights are involved in adjudicatory proceedings before the Board are entitled to the same fairness, impartiality, and independence of judgment as are expected in a court of law. *Jarrott v. Scrivener*, 225 F. Supp. 827 (D.D.C. 1964).

Question of timeliness is jurisdictional; if an appeal is not timely filed, the Board is without power to consider it. When an administrative agency has not adopted a specific time limit on appeals, a reviewing court should apply a standard of reasonableness. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Showing necessary to meet "person aggrieved" jurisdiction requirement. — Persons wishing to contest zoning determinations must demonstrate some damage — damage greater than that suffered by the general public — to satisfy the "person aggrieved" requirement of jurisdiction. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Standing issue is one of statutory construction. — The issue of standing to appeal an administrative decision to higher administrative authority is primarily one of statutory construction. Administrative appeals do not necessarily depend on the elements of standing that judicial review would require. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Property owner has sufficient interest in zoning of adjoining property to permit appeal on the basis of that interest alone, without additional allegations of interest or injury. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Scope of hearing. — Where the applicants submit plans to the Board based upon the Zoning Commission's order, the Board properly limits the scope of its hearing to those matters provided in the zoning regulations and prop-

erly prevents a reopening of the issues decided by the Zoning Commission. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 364 A.2d 610 (1976).

Board must give applicant sufficient notice of issues on which it seeks proof. *Clerics of Saint Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 291 (1974).

Rights of protesting parties. — The parties protesting the granting of an exception are entitled to be given official notice of the exact plans that the Board will ultimately consider and must be accorded full opportunity to present evidence. *Robey v. Schwab*, 307 F.2d 198 (D.C. Cir. 1962).

Burden of proof in exception hearing. — The property owner who appeals for an exception under the zoning law and regulations has the burden of showing the existence of conditions warranting the granting of such an exception. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Hearsay evidence may be admitted in administrative hearing with respect to granting exception. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

And decision based on relevant evidence. — The decision of the Board on an application for an exception must be controlled by the evidence adduced as it relates to the requirements specified in the regulation. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

But public meeting not needed. — A conference at which the Board considers and decides a case need not be public. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 364 A.2d 610 (1976).

De novo hearing proper procedure following improper dismissal. — The Board observes procedural requirements where, promptly after it erroneously dismisses an appeal, it schedules a de novo hearing and affords all interested parties a full opportunity to marshal evidence and present arguments. *Hilton Hotels Corp. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 363 A.2d 670 (1976), *aff'd*, App. D.C., 435 A.2d 1062 (1981).

Prerequisites for exception must be satisfied before decision issued. — The factors established by a zoning regulation as prerequisites for the allowance of an exception must be satisfied before the Board may lawfully issue its decision. *Robey v. Schwab*, 307 F.2d 198 (D.C. Cir. 1962).

And Board must state "full reasons" for its decision. — "Full reasons," within the meaning of a zoning regulation which directs that the full reasons for the decisions of the Board shall be entered in the minutes, means

that in order to support its conclusions, the Board shall make basic findings of fact regarding exceptions and, although the findings need not amount to an exhaustive summation of all the evidence, the Board must state the facts which persuaded it to arrive at its decision. *Robey v. Schwab*, 307 F.2d 198 (D.C. Cir. 1962).

Board's order must contain fact findings.

— An order of the Board upon an application for a special exception in a contested case must contain findings of basic facts on all material issues. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1970), *aff'd*, App. D.C., 320 A.2d 282 (1974).

But findings not demanded for each individual requirement. — The zoning regulation which deals with findings to be made by the Board does not demand findings as to each requirement of the regulation, but only findings "related to" the matters listed there. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 364 A.2d 610 (1976).

Necessity for findings not obviated by costs consideration. — A consideration by the Board of the costs of converting to a residential use a building for which a variance is sought does not obviate the necessity for the findings required by law. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 318 A.2d 894 (1974), *aff'd*, App. D.C., 357 A.2d 402 (1976).

And findings will not be inferred. — The findings of the Board on the objections to granting an exception will not be inferred from the other findings of the Board. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972), *aff'd*, App. D.C., 320 A.2d 282 (1974).

Facts must relate to conclusions. — The Board must articulate the relationship between its findings of fact and conclusions of law. *Smith v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 342 A.2d 356 (1975).

Review precluded where no such delineation. — Findings of fact which are devoid of any delineation of the factors weighed in reaching the conclusions of law preclude judicial review. *Shay v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 334 A.2d 175, *aff'd*, App. D.C., 337 A.2d 506 (1975).

Unexplained statutory language in order insufficient. — An order of the Board which merely summarizes testimony and contains conclusions simply echoing the statutory language dealing with the granting of a variance is insufficient to comply with the requirement that the decision be accompanied by findings of fact. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972), *aff'd*, App. D.C., 320 A.2d 282 (1974).

The Board, in denying a variance, cannot merely quote the pertinent standards without explaining how the proposed variance violates such standards. *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 338 A.2d 428 (1975).

But Board may receive and issue intervenor's proposed order. — The Board does not engage in a denial of due process by receiving an intervenor's proposed order (but not additional evidence) after the record is closed and issuing findings of fact and conclusions of law almost identical to those submitted, even where the proposed order is never served on the petitioner. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (1979).

Failure to make necessary findings leads to vacation of order. — Where the issues on which the Board fails to make express findings of fact are within the conditions to be considered before an exception can be granted, these issues were "material" and any order granting an exception will be vacated. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 293 A.2d 470 (1972), *aff'd*, App. D.C., 320 A.2d 282 (1974).

Board required to reconsider unfulfillable conditional order. — Where conditions imposed by the Board in granting an exception are beyond the power of the applicant to fulfill, the Board is required to reconsider its action. *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 365 A.2d 372 (1976).

But petitioners waive errors by ignoring conditions. — Where the petitioners deliberately chose to ignore a condition in an order granting an exception, they waive any error that might exist and cannot object to the enforcement of the condition. *Nathanson v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 289 A.2d 881 (1972).

Action to review Board's decision differs from action to review Commission's order. — An action to review a decision of the Board differs from an action to review an order of the Zoning Commission in that the latter involves the question of whether the property has been taken without due process of law. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

Scope of review of the actions of the Zoning Commission is very narrow, and the court may not set aside an action of the Commission merely because it might have decided another way. *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255 (D.D.C. 1964).

Scope of review of Board's decision. — A review of a decision of the Board is limited to a determination of whether the decision reached follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evi-

dence. *Stewart v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 305 A.2d 516 (1973).

The court must determine whether the findings made by the Board are supported and in accordance with reliable, probative, and substantial evidence in the whole administrative record and whether the conclusions of the Board flow rationally from these findings. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

In reviewing an order of the Board, the court must determine whether detailed findings were made upon each material contested issue of fact, whether those findings are supported by and in accordance with reliable, probative, and substantial evidence in the whole of the administrative record and whether the conclusions of the Board flow rationally from these findings. *Marjorie Webster Junior College, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 309 A.2d 314 (1973).

On appeal of the Board's findings, the court's inquiry is limited to whether the findings are supported by reliable, probative, and substantial evidence in the record as a whole, and whether the Board's conclusions flow rationally from these findings. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 407 A.2d 1091 (1979).

Court will not ordinarily substitute its judgment for Board's. — The court considers the Board's findings and determinations and will not substitute its judgment so long as there is a rational basis for the Board's opinion. *Browner Bldg., Inc. v. Shehyn*, 442 F.2d 847 (D.C. Cir. 1971).

Arbitrary decision set aside. — Where the decision of the Board, upon review, is clearly unreasonable and arbitrary, it will be set aside. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

The court can set aside an action of the Board in denying an exception to the zoning regulations if it finds that its decision is arbitrary or capricious. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

Refusal to grant exception found unreasonable. — In the absence of evidence that a conversion of a building would any more adversely affect the present character and future development of the neighborhood than do other uses permitted other properties in the same area, and in the absence of evidence that such a use would render less desirable, for residential purposes, other property used as such in the same area, a refusal to grant an exception is without reasonable foundation and constitutes a manifest abuse of discretion. *Hyman v. Coe*, 146 F. Supp. 24 (D.D.C. 1956).

Actions of the Board are accorded the presumption of regularity. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of*

Zoning Adjustment, App. D.C., 364 A.2d 610 (1976).

Board's interpretation of regulation usually controlling. — Where a court reviews the Board's construction of a regulation adopted by the Zoning Commission, the Board's interpretation is controlling, unless it is plainly erroneous or inconsistent with the regulation. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

Zoning regulations construed. — A zoning regulation empowering the Board to permit, in a residential district, the "use of unimproved lot for temporary parking of motor vehicles" means a use for temporary parking and not a temporary use for parking. *Selden v. Capitol Hill S.E. Citizens Ass'n*, 219 F.2d 33 (D.C. Cir. 1954).

Where a proposed facility is not to be open to members of the community at large, but is to be operated as a club with use privileges limited to members and their guests, and where the memberships offered would be limited in number, the facility is a private club and not a "community center" within the meaning of the zoning ordinance in question. *Stewart v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 305 A.2d 516 (1973).

A construction of a zoning regulation to include a high school gymnasium within a high school, rather than as a place of public assemblage is not plainly erroneous or inconsistent with the regulation. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

A nonprofit society organized to advocate and maintain principles of citizen participation in government does not constitute a "private club" within the meaning of the zoning regulations. *Legislative Study Club, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 359 A.2d 153 (1976).

An operation by a hotel of a laundry plant which also serves another nearby hotel owned by the same corporation is not an "accessory use." *Hilton Hotels Corp. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 363 A.2d 670 (1976), *aff'd*, App. D.C., 435 A.2d 1062 (1981).

Decision of the Board must be affirmed if the result is correct, although the Board relies upon the wrong ground or gives the wrong reasons. *Silverstone v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 372 A.2d 1286 (1977), *modified*, App. D.C., 396 A.2d 992 (1979).

New issues raised on review not considered. — On review of a decision of the Board the court cannot consider new issues raised by the petitioners, but will look to the record or portions of it designated by the parties. *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 282 (1974).

And issue not raised timely waived. — An issue is waived by the failure of those opposing the application for an exception to timely raise it at the administrative level and in the judicial review proceeding. *Rose Lees Hardy Home & School Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 343 A.2d 564 (1975).

Review had solely on record before Board. — In an action to set aside an order denying an application for the establishment of a building, judicial review must be had solely on the record before the Board and evidence not introduced before the Board, but presented to the court in the 1st instance, will not be considered. *O'Boyle v. Coe*, 155 F. Supp. 581 (D.D.C. 1957).

Zoning appeal may be dismissed on the ground of laches and estoppel. *Smith v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 342 A.2d 356 (1975).

Laches will bar the claim of petitioners if they delay unreasonably in bringing their appeal to the Board. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Court is not permitted to grant a variance but must remand the case back to the Board where its denial of a variance is not supported by the findings. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 318 A.2d 894 (1974), *aff'd*, App. D.C., 357 A.2d 402 (1976).

Effect of failure to attach authorization letter to appeal form. — Failure to attach to the appeal form a letter from appellant authorizing a party to act on its behalf is not substantial if the purpose of the Board's authorization letter requirement that the Board should not be party to unauthorized appeals is adequately fulfilled. *Goto v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 423 A.2d 917 (1980).

Imposing conditions on variance. — Personal conditions imposed in granting a variance impermissibly regulate the business conduct of the owner, rather than the use of the

property and are unlawful per se; conditions which regulate use of property are not unlawful per se but must be based on evidence. *National Black Child Dev. Inst., Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 483 A.2d 687 (1984).

Proper remedy on remand to Board. — Generally, remand to the Board for further proceedings is appropriate, but where an abuse of discretion is manifest and it is clear that the applicant has carried its burden of proof, then remand to the Board with instructions to grant the applicant's request is proper. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), *aff'd*, 346 F.2d 834 (D.C. Cir. 1965).

Cited in *Dwyer v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 320 A.2d 306 (1974); *Shay v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 337 A.2d 506 (1975); *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 398 A.2d 13 (1979); *Russell v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 402 A.2d 1231 (1979); *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 291 (1979); *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 442 A.2d 129 (1982); *Page Assocs. v. District of Columbia*, App. D.C., 463 A.2d 649 (1983); *President & Dirs. of Georgetown College v. Diavatis*, App. D.C., 470 A.2d 1248 (1983); *Rhema Christian Center v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 515 A.2d 189 (1986); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), *cert. denied*, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989); *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990); *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990); *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991); *Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 619 A.2d 940 (1993).

§ 5-425. Maps and regulations of Zoning Commission to be filed; regulations to be published.

A copy of any map established by said Zoning Commission and of its zoning regulations shall be filed in the Office of the Mayor of the District of Columbia. A copy of any regulation or any amendment adopted after June 20, 1938, shall be published once in 1 or more daily newspapers printed in the District of Columbia for the information of all concerned. (June 20, 1938, 52 Stat. 800, ch. 534, § 9; 1973 Ed., § 5-421.)

Cross references. — As to publication of rules and regulations, see §§ 1-1611 and 1-1612.

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n*, App. D.C., 590 A.2d 1043 (1991).

§ 5-426. Building permits; certificates of occupancy.

It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the Inspector of Buildings, and said Inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of §§ 5-413 to 5-418 and 5-423 to 5-432 and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District and which Court is hereby authorized to hear and determine such cases be punished by a fine of not more than \$100 per day for each and every day such violation shall continue. The Corporation Counsel of the District of Columbia or any neighboring property owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction

of the provisions of §§ 5-413 to 5-418 and 5-423 to 5-432, or any rules or regulations issued under the authority of these sections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 20, 1938, 52 Stat. 800, ch. 534, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 5-422; Oct. 5, 1985, D.C. Law 6-42, § 450, 32 DCR 4450.)

Cross references. — As to list of construction and demolition permits to Advisory Neighborhood Commissions, see § 1-261. As to powers of Assistant Inspector of Buildings, see § 1-1026. As to review of permits in order to determine safety from flood hazards, see § 5-301. As to requirement that certain applications for building permits be submitted to Commission of Fine Arts, see §§ 5-410 and 5-411. As to fees for permits, see §§ 5-433 and 5-434.

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-427, 5-428, 5-429, 5-430, 5-431, 5-432, and 47-1401.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Office of Inspector of Buildings abolished. — Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the

Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

Zoning violation does not constitute nuisance per se. *B & W Mgt., Inc. v. Tasea Inv. Co.*, App. D.C., 451 A.2d 879 (1982).

Effect of failure to obtain certificate of occupancy. — The failure of the tenant to obtain a certificate of occupancy as required by this section was held to result in the use of the premises for an unlawful purpose in violation of the contract, which resulted in the lease being voidable, and not automatically void, notwithstanding the provision that the lease will cease and determine upon the use of the premises for any unlawful purposes. *Entrepreneur, Ltd. v. Yasuna*, App. D.C., 498 A.2d 1151 (1985).

Existence or likelihood of zoning violation is prerequisite to injunctive relief. — Since the existence of a zoning violation is an issue of fact, it is necessary for the trial court, in ruling on the request for a permanent injunction, to make a specific finding on the question of whether a violation has actually

occurred or is likely to occur before it can decide whether to grant injunctive relief. *President & Dirs. of Georgetown College v. Diavatis*, App. D.C., 470 A.2d 1248 (1983).

Suit to enjoin Zoning Commission from carrying into effect order is not appealed on the merits of the issues presented to the Commission, and, hence, the court should not substitute its judgment for that of the Commission, even for reasons which appear most persuasive. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

Failure to exhaust administrative remedies leads to denial of injunction. — It is improper to determine the merits and to issue a permanent injunction against a particular property use without requiring a recourse, under the doctrine of primary jurisdiction, to the administrative remedies available to the parties. *Browner Bldg., Inc. v. Shehyn*, 442 F.2d 847 (D.C. Cir. 1971).

Commission represents adjoining property owners' interests in injunction suit. — In a suit to enjoin members of the Zoning Commission from carrying into effect a zoning order, the Commission, in the absence of intervention by the adjoining property owners, represents their interests. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

But Commission's failure to appeal adverse decision constitutes "inadequate representation". — The failure of the Zoning Commission to take an appeal from an order enjoining it from enforcing a zoning order constitutes an inadequate representation of the interests of an adjoining property owner who is not a party. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

"Specially damaged" neighboring property owners must show irreparable harm to obtain relief. — The portion of this section which refers to neighboring property owners or occupants who may be "specially damaged" gives standing to such parties to bring suit but gives no right to relief without a showing of irreparable harm. It does not require issuance of an injunction merely on a showing of special damage. *President & Dirs. of Georgetown College v. Diavatis*, App. D.C., 470 A.2d 1248 (1983).

Adjoining property owners in suit to enjoin zoning order are bound by decree. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

Hence, they should be granted permission to intervene. — Adjoining property owners have such a vital interest in the result of a suit to vacate a zoning order that they should be granted permission to intervene as a

matter of course, unless compelling reasons against such intervention are shown. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

Such intervenor possesses all rights of party. — An adjoining property owner who intervenes subsequent to the entry of a final decree in a suit to enjoin the Zoning Commission from carrying into effect a zoning order is possessed of all the rights of a party at that stage of the proceedings, including the right to appeal. *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir.), cert. denied, 323 U.S. 777, 65 S. Ct. 190, 89 L. Ed. 621 (1944).

Scope of review of Board's findings and determinations. — In performing its function of judicial review, the court considers the Zoning Board's findings and determinations and will not substitute its judgment for the Board's so long as there is a rational basis for the Board's opinion. *Browner Bldg., Inc. v. Shehyn*, 442 F.2d 847 (D.C. Cir. 1971).

Permit applicant entitled to notice of action taken, with reasons therefor. — An applicant for an occupancy permit under this chapter is entitled to a notice of action taken thereon, with reasons therefor, but having been given a notice of rejection with reasons, he has the duty to cease the use applied for. *Savage v. District of Columbia*, App. D.C., 54 A.2d 562 (1947).

Superior Court's duty not affected by federal action. — The Superior Court's duty of determining whether a violation of this section occurred is not affected by a federal court decision in a declaratory judgment action. *McCloskey v. Scrivener*, 238 F. Supp. 497 (D.D.C. 1965).

Right to jury trial. — Where a party is charged under separate informations with separate offenses, which are consolidated for trial, jury trial is properly denied. *Savage v. District of Columbia*, App. D.C., 54 A.2d 562 (1947).

Landlord's violations. — A landlord's violation in failing to procure a required license is not to be treated any differently than a violation in failing to meet the minimum standards of habitability. *Curry v. Dunbar House, Inc.*, App. D.C., 362 A.2d 686 (1976).

Failure to correct conditions bars defense in later prosecution. — An applicant who continuously fails to correct conditions which caused the rejection of his application for an occupancy permit cannot claim in a later prosecution that he was never given an opportunity to correct the conditions. *Savage v. District of Columbia*, App. D.C., 54 A.2d 562 (1947).

Acquittal no bar to later prosecution for same illegal use. — An acquittal on the charge of using a dwelling without an occupancy permit between certain dates does not

bar a prosecution for a later use without a permit. *Savage v. District of Columbia*, App. D.C., 54 A.2d 562 (1947).

Cited in *Hsu v. Thomas*, App D.C., 387 A.2d 588 (1978); *Page Assocs. v. District of Columbia*, App. D.C., 463 A.2d 649 (1983); *Weinberg v. Barry*, 604 F. Supp. 390 (D.D.C. 1985);

Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106 (D.D.C. 1986); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

§ 5-427. Enforcement of zoning regulations.

The Mayor of the District of Columbia shall enforce the regulations adopted under the authority of §§ 5-413 to 5-432. Nothing contained in §§ 5-413 to 5-432 shall be construed to limit the authority of the Mayor or Council of the District of Columbia to make municipal regulations which are not inconsistent with the provisions of §§ 5-413 to 5-432 and the regulations adopted thereunder. (June 20, 1938, 52 Stat. 801, ch. 534, § 11; 1973 Ed., § 5-423.)

Cross references. — As to power and duty of Council and Mayor to make and enforce building regulations, see § 1-322.

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans in Volume 1*) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

District government may not adopt a regulation which attempts to regulate building use, as this is in the jurisdiction of the Zoning Commission. *Schwartz v. Brownlow*, 270 F. 1019 (D.C. Cir. 1959), rev'd on other grounds, 261 U.S. 216, 43 S. Ct. 263, 67 L. Ed. 620 (1963).

§ 5-428. Construction.

Wherever the regulations made under the authority of §§ 5-413 to 5-432 require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or municipal regulations require a greater width or size of yards, courts, or other open spaces or require a lower height of buildings or smaller number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such other statute or municipal regulation shall govern. (June 20, 1938, 52 Stat. 801, ch. 534, § 12; 1973 Ed., § 5-424.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

§ 5-429. Definitions.

The word “amend,” “amendment,” “amendments,” or “amended,” when used in §§ 5-413 to 5-432 in relation to the zoning regulations, shall be deemed to include any modification of the text or phraseology of the regulations or of any provision of the regulations or any regulations or any repeal or elimination of any regulation or regulations or part thereof or any addition to the regulations or any new regulation or any change of or in the wording or content of the regulations. The word “amend,” “amendment,” “amendments,” or “amended,” when used in said sections in relation to the zoning maps or any map, shall be deemed to include any change in the number, shape, boundary, or area of any district or districts, any repeal or abolition of any such map or any part thereof, any addition to any such map, any new map or maps, or any other change in the maps or any map. The words “administrative decision,” “administrative officer,” “administrative officer or body,” when used in § 5-424 shall not be deemed to include the Zoning Commission. (June 20, 1938, 52 Stat. 801, ch. 534, § 13; 1973 Ed., § 5-425.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

§ 5-430. Appropriations authorized; compensation.

Appropriations are hereby authorized to carry out the provisions of §§ 5-413 to 5-432 for the fiscal year ending June 30, 1938, and thereafter the Mayor of the District of Columbia is authorized and directed to include in his annual estimates such amounts as may be required for salaries and expenses incident to such purposes. Each member of the Zoning Commission and of the Board of Zoning Adjustment shall be entitled to receive compensation. Members of the Zoning Commission for the District of Columbia shall receive compensation in accordance with § 5-412(b). No compensation shall be paid to a member of the Board of Zoning Adjustment who is also a full-time officer or employee of the District of Columbia government or who serves on the Board of Zoning Adjustment as a federal government representative pursuant to § 5-424. (June 20, 1938, 52 Stat. 802, ch. 534, § 14; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 5-426; May 13, 1975, D.C. Law 1-1, § 1, 21 DCR 3938; Mar. 3, 1979, D.C. Law 2-139, § 3205(nn), 25 DCR 57-40; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Sept. 29, 1988, D.C. Law 7-168, § 2, 35 DCR 5747.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1. As to refunds of taxes and license deposits, see §§ 47-1317 and 47-1318.

Section references. — This section is referred to in §§ 1-637.1, 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

Legislative history of Law 1-1. — Law 1-1, the “Zoning Commission and Zoning Board of Adjustment Compensation Act of 1975,” was introduced in Council and assigned Bill No. 1-5, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on February 18, 1975, and March 4, 1975, respectively. Signed by the

Mayor on March 10, 1975, it was assigned Act No. 1-2 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81, the "District of Columbia Government Comprehensive Merit Personnel Act of 1980," was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-168. — Law 7-168, the "Zoning Commission and Board of Zoning Adjustment Compensation Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-512, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-224 and transmitted to both Houses of Congress for its review.

Application of § 2 of D.C. Law 7-168. — Section 3 of D.C. Law 7-168 provided that the compensation provided for in § 2 shall be paid for services rendered on or after May 1, 1988.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-431. Laws repealed.

The Act of March 1, 1920 (41 Stat. 500, ch. 92), excepting the provisions of § 5-412 creating the Zoning Commission, providing for its membership and service without additional compensation, are hereby repealed. All laws or parts of other laws in conflict with the provisions of §§ 5-413 to 5-432 are hereby repealed. (June 20, 1938, 52 Stat. 802, ch. 534, § 15; 1973 Ed., § 5-427.)

Section references. — This section is referred to in §§ 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 5-432.

§ 5-432. Federal public buildings excepted from §§ 5-413 to 5-432.

The provisions of §§ 5-413 to 5-432 shall not apply to federal public buildings; provided, however, that, in order to ensure the orderly development of the national capital, the location, height, bulk, number of stories, and size of federal public buildings in the District of Columbia and the provision for open space in and around the same will be subject to the approval of the National Capital Planning Commission. (June 20, 1938, 52 Stat. 802, ch. 534, § 16; 1973 Ed., § 5-428.)

Section references. — This section is referred to in §§ 1-2004, 5-413, 5-415, 5-423, 5-424, 5-426, 5-427, 5-428, 5-429, 5-430, 5-431, and 7-1041.

Sections 5-413 to 5-432 inapplicable. — Sections 5-413 to 5-432 do not apply to buildings constructed on property transferred or conveyed pursuant to the Act of October 8, 1968, 82 Stat. 958, Pub. L. 90-553, as amended by the Act of May 25, 1982, 96 Stat. 101, Pub. L. 97-186.

Transfer of functions. — “National Capital

Planning Commission” was substituted for “National Capital Park and Planning Commission” in the proviso in this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Cited in *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

§ 5-433. Mayor to prescribe fees for permits, certificates, and transcripts by Inspector of Buildings; schedule of fees to be displayed.

The Mayor of the District of Columbia is hereby authorized and directed, from time to time, to prescribe a schedule of fees to be paid for permits, certificates, and transcripts of records issued by the Inspector of Buildings of the District of Columbia, for the erection, alteration, repair, or removal of buildings and their appurtenances, and for the location of certain establishments for which permits may be required under the building regulations of the District of Columbia, said fees to cover the cost and expense of the issuance of said permits and certificates and of the inspection of the work done under said permits; said schedule shall be printed and conspicuously displayed in the office of said Inspector of Buildings; said fees shall be paid to the Collector of Taxes of the District of Columbia and shall be deposited by him in the Treasury of the United States to the credit of the revenues of the District of Columbia. (Mar. 3, 1909, 35 Stat. 689, ch. 250; 1973 Ed., § 5-429.)

Cross references. — As to issuance of building permits and certificates of occupancy, see § 5-426. As to disposition of fees, see § 47-127.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Office of Inspector of Buildings abolished. — Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section,

the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all offi-

cers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 5-434. Cancellation of building permits.

In any case where building permits have been issued and no work has been begun thereunder, the person who has paid the fee for said permit may return said permit for cancellation, and upon the cancellation thereof there shall be refunded to him, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of said fee less the actual expense incident to the issuance of said permit, as determined by the Inspector of Buildings; provided, that application for such refund shall be made within 6 months after the issuance of said permit. (Mar. 2, 1911, 36 Stat. 967, ch. 192; 1973 Ed., § 5-430.)

CHAPTER 5. FIRE SAFETY.

Sec.	Sec.
5-501. Fire escapes — Buildings used as dwellings; exceptions.	annual hauling permits for certain multi-axle motor vehicles.
5-502. Same — Commercial buildings; access to escapes; hallway and stairway lights.	5-517. Interstate agreement concerning hauling permit fees for certain multi-axle motor vehicles.
5-503. Duty of owner to provide fire safety measures.	5-518. Regulations authorized concerning means of egress and fire safety appliances.
5-504. Regulations authorized for enforcement of §§ 5-501 to 5-512.	5-519. Occupancy after receipt of notice.
5-505. Elevators and stairways extending to basement; exemptions for certain office buildings.	5-520. Notice requiring installation of means of egress or fire safety appliances.
5-506. Obstruction of halls and stairways.	5-521. Violation of §§ 5-518 to 5-524.
5-507. Obstruction of fire escapes and approaches.	5-522. Service of notice.
5-508. Violations of §§ 5-501 to 5-512.	5-523. Failure of owner to comply with notice.
5-509. Notice requiring provision of fire safety measures — Contents.	5-524. Injunction to restrain use of building in violation of §§ 5-518 to 5-524.
5-510. Same — Service; failure of owner to comply.	5-525. Alterations to rental units causing violations of housing regulations after notice to vacate — Prohibited.
5-511. Injunction to restrain use of building in violation of §§ 5-501 to 5-512.	5-526. Same — Exemption by consent of tenants.
5-512. Definitions.	5-527. Same — Exemption by Mayor.
5-513. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition.	5-528. Same — Penalty.
5-514. Inspection of buildings for violative conditions; interference with inspection.	5-529. Smoke detectors — Definitions.
5-515. Notice requiring correction of unlawful conditions; service.	5-530. Same — General requirements.
5-516. Fees for inspection of buildings; fees for	5-530.1. Same — Visual alert systems.
	5-531. Same — Locations.
	5-532. Same — Equipment.
	5-533. Same — Installation.
	5-534. Same — Maintenance.
	5-535. Same — Permits.
	5-536. Same — Other applicable standards.
	5-537. Same — Civil penalties.
	5-538. Same — Installation by tenant.

§ 5-501. Fire escapes — Buildings used as dwellings; exceptions.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building 3 or more stories in height, constructed or used or intended to be used as an apartment house, tenement house, flat, rooming house, lodging house, hotel, hospital, seminary, academy, school, college, institute, dormitory, asylum, sanitarium, hall, place of amusement, office building, or store, or of any building 3 or more stories in height, or over 30 feet in height, other than a private dwelling, in which sleeping quarters for the accommodation of 10 or more persons are provided above the 1st floor, to provide and cause to be erected and fixed to every such building 1 or more suitable fire escapes, connecting with each floor above the 1st floor by easily accessible and unobstructed openings, in such location and numbers and of such material, type, and construction as the Council of the District of Columbia may determine; except that buildings designed and built as single-family dwellings, and converted to use as apartment houses, in which not more than

3 families reside, including the owner or lessee, or rooming houses in which sleeping accommodations are provided for less than 10 persons above the 1st floor, not more than 3 stories nor more than 40 feet in height, and having a total floor area not more than 3,000 square feet above the 1st floor, shall be exempted from the provisions of this section; and except that buildings used solely as apartment houses, not more than 3 stories nor more than 40 feet in height, so arranged that not more than 5 apartments per floor open directly, without an intervening hall or corridor, on a fire-resistive stairway, 3 feet or more in width, enclosed with masonry walls in which fire-resistive doors are provided at all openings, shall be exempted from the provisions of this section. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 1; Mar. 2, 1907, 34 Stat. 1247, ch. 2566, § 1; June 4, 1934, 48 Stat. 843, ch. 388; 1973 Ed., § 5-301.)

Cross references. — As to powers and duties of Council and Mayor concerning building regulations and zoning, see §§ 1-322 and 5-412. As to exemptions from elevator and stairway requirements, see § 5-505. As to notice to erect fire escapes or other appliances, see § 5-509. As to definitions, see § 5-512. As to failure of owner to correct conditions, see § 5-513. As to inspection fees, see § 5-516.

Section references. — This section is referred to in §§ 5-503, 5-504, 5-505, 5-506, 5-508, 5-509, 5-510, 5-511, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(117) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Applicability of chapter. — This chapter is

in the nature of a police regulation and is intended to apply to both those buildings to be erected and those in existence and used for purposes named in this chapter. *Hill v. Raymond*, 81 F.2d 278 (D.C. Cir. 1935).

Applicability of regulations under § 5-518. — Where, after the institution of an action for possession based on an allegedly unlawful use of leased premises, the provisions of this section are relaxed and the use complained of becomes lawful, the tenant is entitled to the protection of the regulations under § 5-518. *Cosby v. Shoemaker*, App. D.C., 34 A.2d 27 (1943).

Prerequisite to ordering erection of fire escapes. — Before the District government can order the erection of fire escapes, it must first determine the number and character required. *Moore's Victoria Theatre Co. v. District of Columbia*, 299 F. 923 (D.C. Cir. 1924).

Failure of owner to comply with section is not conclusive evidence of negligence, but is a question for the jury. *Hill v. Raymond*, 81 F.2d 278 (D.C. Cir. 1935).

And tenant's use of stairway not negligence per se. — The use of stairway by a tenant where he is aware that the owner has not complied with this section is not contributory negligence as a matter of law, but is a question of fact for the jury to determine. *Hill v. Raymond*, 81 F.2d 278 (D.C. Cir. 1935).

Tenant cannot voluntarily erect fire escapes and recover therefor from the landlord. *Goldwyn Distrib. Corp. v. Carroll*, 276 F. 63 (D.C. Cir. 1921).

Cited in *United States v. Interstate Properties*, 153 F.2d 469 (D.C. Cir. 1946).

§ 5-502. Same — Commercial buildings; access to escapes; hallway and stairway lights.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building already erected, or which may hereafter be erected, in which 10 or more persons are employed at the same time in any of the stories above the 2nd story, except 3-story buildings used exclusively as stores or for office purposes, and having at least 2 stairways from the ground floor each 3 or more feet wide and separated from each other by a distance of at least 30 feet, from 1 of which stairways shall be easy access to the roof, to provide and cause to be erected and affixed thereto a sufficient number of the aforesaid fire escapes, the location and number of the same to be determined by the Mayor of the District of Columbia, and to keep the hallways and stairways in every such building as is used and occupied at night properly lighted, to the satisfaction of the Mayor, from sunset to sunrise. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 2; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388; 1973 Ed., § 5-302.)

Section references. — This section is referred to §§ 5-503, 5-504, 5-505, 5-506, 5-508, 5-509, 5-510, 5-511, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Prior lighting requirement applies to building erected prior to passage of section. *Hill v. Raymond*, 81 F.2d 278 (D.C. Cir. 1935).

§ 5-503. Duty of owner to provide fire safety measures.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building used or intended to be used as set forth in § 5-501 where fire escapes are required, or any building in which 10 or more persons are employed, as set forth in § 5-502, where fire escapes are required, also to provide, install, and maintain therein proper and sufficient guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, and alarm gongs and striking stations in such locations and numbers and of such type and character as the Mayor of the District of Columbia may determine; except that in buildings less than 6 stories in height, standpipes will not be required when fire extinguishers are installed in such numbers and of such type and character as the Mayor of the District of Columbia may determine. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 3; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388; 1973 Ed., § 5-303.)

Cross references. — As to District of Columbia Residential, Commercial, and Institutional Structures Fire Protection Study Commission, see Chapter 31 of Title 2. As to voluntary erection of fire escape by tenant, see § 5-501.

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-508, 5-509, 5-510, 5-511, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-504. Regulations authorized for enforcement of §§ 5-501 to 5-512.

The Mayor of the District of Columbia is hereby authorized and directed to issue such orders and the Council of the District of Columbia is hereby authorized and directed to adopt, and the Mayor to enforce, such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of §§ 5-501 to 5-512, and the Mayor is hereby authorized and directed to require any alterations or changes that may become necessary in buildings now or hereafter erected, in order properly to locate or relocate fire escapes, or to afford access to fire escapes, and to require any changes or alterations in any building that may be necessary in order to provide for the erection of additional fire escapes, or for the installation of other appliances required by §§ 5-501 to 5-512, when in the judgment of the Mayor such additional fire escapes or appliances are necessary. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 4; June 4, 1934, 48 Stat. 844, ch. 388; 1973 Ed., § 5-304.)

Cross references. — As to rules and regulations, see §§ 1-319, 1-322, and 5-412.

Section references. — This section is referred to in §§ 5-505, 5-506, 5-508, 5-509, 5-510, 5-511, and 5-512.

Development of model construction codes. — See Act of July 1, 1983, D.C. Law 5-15, 30 DCR 2661.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(118) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) trans-

ferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-505. Elevators and stairways extending to basement; exemptions for certain office buildings.

(a) Each elevator shaft and stairway extending to the basement of the buildings heretofore mentioned shall terminate in a fireproof compartment or enclosure separating the elevator shaft and stairs from other parts of the basement, and no opening shall be made or maintained in such compartment or enclosure unless the same be provided with fireproof doors.

(b) Such buildings as are used solely for office buildings above the 2nd floor and defined under the building regulations of the District of Columbia to be fireproof are exempted from the requirements of §§ 5-501 to 5-512 as to fire escapes, guide signs, and alarm gongs; but when the face of a wall of any such fireproof building is within 30 feet of a combustible building or structure, or when the side or sides, front or rear of such building or structure faces within 30 feet of a combustible building, or contains a light or air shaft or similar recess within 30 feet of a combustible building, then each and every window or opening in said wall or walls shall be protected from fire by automatic iron shutters or wire glass in fireproof sash and frames. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 5; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 844, ch. 388; 1973 Ed., § 5-305.)

Cross references. — As to general powers of Council concerning regulation of elevators, see § 1-323.

Section references. — This section is referred to in §§ 5-504, 5-506, 5-508, 5-509, 5-510, 5-511, and 5-512.

Necessary contents of manslaughter indictment based on elevator regulations vi-

olations. — A manslaughter indictment based on violations of elevator regulations should point out with particularity what regulations were violated and should show that these are applicable to the situation. *United States v. Interstate Properties*, 153 F.2d 469 (D.C. Cir. 1946).

§ 5-506. Obstruction of halls and stairways.

It shall be unlawful to obstruct any hall, passageway, corridor, or stairway in any building enumerated in §§ 5-501 to 5-512 with baggage, trunks, furniture, cans, or with any other thing whatsoever. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 6; June 4, 1934, 48 Stat. 844, ch. 388; 1973 Ed., § 5-306.)

Section references. — This section is referred to in §§ 5-504, 5-505, 5-508, 5-509, 5-510, 5-511, and 5-512.

§ 5-507. Obstruction of fire escapes and approaches.

No door or window leading to any fire escape shall be covered or obstructed by any fixed grating or barrier, and no person shall at any time place any encumbrance or obstacle upon any fire escape or upon any platform, ladder, or stairway leading to or from any fire escape. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 7; June 4, 1934, 48 Stat. 844, ch. 388; 1973 Ed., § 5-307.)

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-508, 5-509, 5-510, 5-511, and 5-512.

§ 5-508. Violations of §§ 5-501 to 5-512.

Any person failing or neglecting to provide fire escapes, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs, and striking stations, or other appliances required by §§ 5-501 to 5-512, after notice from the Mayor of the District of Columbia so to do, shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$100 and shall be punished by a further fine of \$5 for each day that he fails to comply with such notice. Any person violating any other provision of §§ 5-501 to 5-512 or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than \$10 nor more than \$100 for each offense. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 8; June 4, 1934, 48 Stat. 845, ch. 388; 1973 Ed., § 5-308.)

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-509, 5-510, 5-511, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Apartment house within operation of rooming house regulations. — Premises on which violations of rooming house regulations allegedly occur are within the operation of such regulations though licensed as an apartment house. *District of Columbia v. Basiliko*, App. D.C., 44 A.2d 407 (1945).

§ 5-509. Notice requiring provision of fire safety measures — Contents.

The notice from the Mayor of the District of Columbia requiring the erection of fire escapes and other appliances enumerated in §§ 5-501 to 5-512 shall specify the character and number of fire escapes or other appliances to be provided, the location of the same, and the time within which said fire escapes or other appliances shall be provided, and in no case shall more than 90 days be allowed for compliance with said notice unless the Mayor shall, in his discretion, deem it necessary to extend their time. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 9; June 4, 1934, 48 Stat. 845, ch. 388; 1973 Ed., § 5-309.)

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-508, 5-510, 5-511, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Building owner is entitled to opportunity to install protection before proceedings are instituted against him. *Moore's Victoria Theatre Co. v. District of Columbia*, 299 F. 923 (D.C. Cir. 1924).

§ 5-510. Same — Service; failure of owner to comply.

Such notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or if no such residence or place of business can be found in said District by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or if no such office can be found in said District by reasonable search if forwarded by registered mail or by certified mail to the last known address of the person to be notified and not returned by the post office authorities, or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post office authorities, if published on 10 consecutive days in a daily newspaper published in the District of Columbia, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided, or if delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of §§ 5-501 to 5-512, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notice to a foreign corporation shall, for the purposes of §§ 5-501 to 5-512, be deemed to have been served if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia; provided, that in case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any buildings specified in §§ 5-501 to 5-512, to comply with the requirements of the notice provided for in § 5-509, the Mayor of the District of Columbia is hereby empowered and it is his duty to cause such erection of fire escapes and other appliances mentioned in the notice provided for, and he is hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, and to issue tax-lien certificates against such building and grounds for the amount of such assessments, bearing interest at the rate of 10% per annum, which certificates may be turned over by the Mayor of the District of Columbia to the contractor

for doing the work. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 10; Mar. 2, 1907, 34 Stat. 1248, ch. 2566, § 1; June 4, 1934, 48 Stat. 845, ch. 388; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(42); 1973 Ed., § 5-310.)

Cross references. — As to certified mail return receipts as prima facie evidence of delivery, see § 14-506.

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-508, 5-509, 5-511, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-511. Injunction to restrain use of building in violation of §§ 5-501 to 5-512.

The Superior Court of the District of Columbia, in term time or in vacation, may, upon a petition of the District of Columbia, filed by its Mayor, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of §§ 5-501 to 5-512. (Mar. 19, 1906, 34 Stat. 72, ch. 957, § 11; June 4, 1934, 48 Stat. 846, ch. 388; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(16); 1973 Ed., § 5-311.)

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-508, 5-509, 5-510, and 5-512.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Condition precedent for proceedings against person. — Any person who may be proceeded against under this chapter is entitled to know what is required of him before he can be criminally penalized, enjoined in equity, or assessed for work done on his property. *Moore's Victoria Theatre Co. v. District of Columbia*, 299 F. 923 (D.C. Cir. 1924).

§ 5-512. Definitions.

As used in §§ 5-501 to 5-512:

(1) The terms "apartment house," "tenement house," and "flat" mean a building in which rooms in suites are provided for occupancy by 3 or more families.

(2) The term "rooming house" means a building in which rooms are rented and sleeping quarters provided to accommodate 10 or more persons, not including the family of the owner or lessee.

(3) The term "lodging house" means a building in which sleeping quarters are provided to accommodate 10 or more transients.

(4) The term "hotel" means a building in which meals are served and rooms are provided for the accommodation of 10 or more transients.

(5) The term "elevator shaft" includes a dumbwaiter shaft.

(6) The term "fire escape" means an exterior open stairway or arrangement of ladders constructed entirely of incombustible materials and of approved design, or an interior or exterior stairway of fire-resistive construction with enclosing walls of masonry with fire-resistive doors and windows.

(7) The term "standpipe" means a vertical iron or steel pipe provided with hose connections and valves, so arranged as to supply water for firefighting purposes.

(8) The terms "fireproof" and "fire-resistive" have the same meaning as is ascribed to the term "fire-resistive" in the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986. (Mar. 19, 1906, ch. 957, § 12; June 4, 1934, 48 Stat. 846, ch. 388; 1973 Ed., § 5-312; Mar. 21, 1987, D.C. Law 6-216, § 13(d), 34 DCR 1072.)

Section references. — This section is referred to in §§ 5-504, 5-505, 5-506, 5-508, 5-509, 5-510, and 5-511.

Legislative history of Law 6-216. — Law 6-216, the "Construction Codes Approval and Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986,

respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

References in text. — The "Construction Codes Approval and Amendments Act of 1986," referred to in paragraph (8), is D.C. Law 6-216.

§ 5-513. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition.

(a) Whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner provided in § 5-515, to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the Mayor of said District, why he should not be required to correct such condi-

tion, then, and in that instance, the Mayor of the District of Columbia is authorized to: Cause such condition to be corrected; assess the cost of correcting such condition and all expenses incident thereto (including the cost of publication, if any, herein provided for) as a tax against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of the District, and collect such tax in the same manner as general taxes in said District are collected; provided, that the correction of any condition aforesaid by the Mayor of said District under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same.

(b)(1) There is established in the District of Columbia, and accounted for within the General Fund, a separate revenue source allocable to provide authorization for the purpose of paying the costs of correction of any condition, and all expenses incident thereto, that the Mayor may order or cause pursuant to subsection (a) of this section. Any unexpended balance at the end of the year shall be reserved as a restricted fund balance and used to provide authorization to expend for subsequent years subject to the direction of the Mayor.

(2) There shall be deposited to the credit of the fund such amounts as may be appropriated for the fund or for the purposes of the fund; grants from any source to the fund or to the District of Columbia for the purposes of the fund; interest earned from the deposit or investment of monies of the fund; amounts assessed and collected as a tax against real property pursuant to subsection (a) of this section, including any interest and any penalties thereon, or otherwise received to recoup any amounts, incidental expenses or costs incurred, obligated or expended for the purposes of the fund; and all other receipts of whatever nature derived from the operation of the fund.

(3) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year, and there are authorized to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be necessary for the capitalization of the fund.

(4) Not later than 6 months after the end of each fiscal year, the Mayor shall submit to the Council of the District of Columbia a report of the financial condition of the fund and the results of the operations and collections for such fiscal year. Said report should include, but not be limited to, the itemized amounts of unrecovered taxes and penalties, the names of delinquent property owners, and the nature of corrected building violations.

(c) The Mayor may cause the summary correction of housing regulation violations where a life-or-health threatening condition exists, as determined by the Mayor. A life-or-health threatening condition means a condition which imminently endangers the health or safety of the tenant who occupies the premises in a housing unit. The condition may include, but is not limited to, the interruption of electrical, heat, gas, water, or other essential services, when the interruption results from other than natural causes. The Mayor shall notify promptly the owner or authorized agent that the correction is ordered within a specified time period. If at the time of this notice the owner is

engaged in a good faith effort to make the necessary correction, the Mayor shall not commence corrective action unless and until the owner interrupts or ceases the effort. A good faith effort shall be one which is likely to cause the correction of the condition at least as soon as it could otherwise be corrected by the Mayor. The Mayor shall provide an opportunity for review of the summary corrective action without prejudice to the Mayor's authority to take and complete that action. The owner or authorized agent shall be notified by personal service or by registered mail to the last known address and by conspicuous posting on the property. If the owner or address is unknown, or cannot be located, notice shall be provided by conspicuous posting on the property. The Mayor may assess all reasonable costs of correcting the condition and all expenses incident thereto as a tax against the property, to carry this tax on the regular tax rolls, and to collect the tax in the same manner as real estate taxes are collected. Monies in the revolving fund established by subsection (b) (1) of this section shall be available to cover the costs of the summary correction authorized by this subsection.

(d) The Mayor may charge any property owner whose property is the subject of corrective action, as provided in subsection (c) of this section, or any property owner who receives a notice to correct wrongful conditions pursuant to § 5-604(c) a fee to cover the administrative costs incurred by the District of Columbia in its efforts to provide that the violation be corrected. The Mayor may assess this fee as a tax against the property, may carry this tax on the regular tax rolls, and may collect this tax in the same manner as real estate taxes are collected.

(e) The Mayor may defer or forgive, in whole or in part, any cost or fee assessed pursuant to §§ 5-513 to 5-515 with respect to any qualified real property approved pursuant to § 5-1403. (Apr. 14, 1906, 34 Stat. 114, ch. 1626, § 1; 1973 Ed., § 5-313; Jan. 5, 1980, D.C. Law 3-45, § 2, 26 DCR 2305; June 14, 1980, D.C. Law 3-70, § 7(m), 27 DCR 1776; Mar. 10, 1983, D.C. Law 4-205, § 2, 30 DCR 188; Oct. 20, 1988, D.C. Law 7-177, § 8, 35 DCR 6158.)

Cross references. — As to requirement that resident agent maintain vacant property in District for nonresident owner, see § 45-1311.

Section references. — This section is referred to in §§ 5-514, 5-515, 5-605, 5-1403, and 47-1205.

Legislative history of Law 3-45. — Law 3-45, the "Realty Violations Correction Fund Act of 1979," was introduced in Council and assigned Bill No. 3-136, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1979, and October 23, 1979, respectively. Signed by the Mayor on November 9, 1979, it was assigned Act No. 3-123 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70, the "District of Columbia Fund Accounting Act of 1980," was introduced in Council

and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980, and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-205. — Law 4-205, the "Summary Abatement of Life-or-Health Threatening Conditions Act of 1982," was introduced in Council and assigned Bill No. 4-459, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-289 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-177. — Law

7-177, the "Economic Development Zone Incentives Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-208, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1988, and July 12, 1988, respectively. Signed by the Mayor on August 2, 1988, it was assigned Act No. 7-237 and transmitted to both Houses of Congress for its review.

Mayor authorized to issue rules. — Section 13 of D.C. Law 7-177 provided that the Mayor shall issue rules to implement the provisions of the act.

Purpose of section. — The need for a mechanism to abate various nuisances not specifically covered by §§ 5-604 through 5-608 and by other laws, especially those for which the responsible persons were not reachable by court process, was the principal purpose underlying enactment of this section. *Auger v. D.C. Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

Purpose of assessments. — Assessments made by the District government pursuant to this section are clearly designed to maintain a particular property and to reimburse the District government for expenditures in maintaining the property; they are not for the purpose of raising revenue. *Stuart v. American Sec. Bank*, App. D.C., 494 A.2d 1333 (1985).

Water pipe repair regulations constitutional. — The rules and regulations regarding the repair of water pipes by residents of the District do not violate the equal protection and due process clauses of the Constitution, in the absence of a showing of invidious discrimination by the District in favor of some citizens at the expense of others. *District of Columbia v. North Washington Neighbors, Inc.*, App. D.C., 367 A.2d 143 (1976), cert. denied, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1977).

Special assessments held to be neither water rents nor taxes. — Special assessments in the form of certificates of delinquent costs for correction of wrongful conditions are neither water rents nor taxes within the meaning of a disputed advertisement of sale. *Stuart v. American Sec. Bank*, App. D.C., 494 A.2d 1333 (1985).

District possesses enforcement authority to order repairs. — The District has the authority to order property owners to repair leaking water pipes and can enforce such authority by a fine or by a termination of the owner's water service, or, in the discretion of the Mayor

and his representatives, by repairing the pipes and assessing the costs of such repair against the property served. *District of Columbia v. North Washington Neighbors, Inc.*, App. D.C., 367 A.2d 143 (1976), cert. denied, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1977).

District has duty to temporarily provide essential utility services. — Where low income tenants face the imminent failure of essential utility services, the District has the duty to provide these services on a temporary and emergency basis. *Masszon v. Washington*, 321 F. Supp. 965 (D.D.C. 1971), appeal dismissed, 476 F.2d 915 (D.C. Cir. 1973).

But not compelled to provide services permanently. — There is no statutory authority that compels the District to provide, on a permanent, continuing basis, basic utility services, including water, heat, gas, and electricity, and that explicitly compels it to make extensive repairs to leased premises. *Masszon v. Washington*, 321 F. Supp. 965 (D.D.C. 1971), appeal dismissed, 476 F.2d 915 (D.C. Cir. 1973).

Possibility of discontinuation of interim utility services insufficient to confer standing. — The mere possibility that petitioners may have their interim utility services, provided under this section, discontinued at some point in the future is an insufficient basis to confer standing upon them for purposes of § 1-1510. *Lee v. District of Columbia Bd. of Appeals & Review*, App. D.C., 423 A.2d 210 (1980).

Regulations cannot be enforced against vacated building. — Where a building is vacated, demolished, or scheduled for demolition, an action to enforce the housing regulations will not lie. *Masszon v. Washington*, 476 F.2d 915 (D.C. Cir. 1973).

Section grants District authority to enforce valid order revoking sign permit. — This section is not limited to abatement of nuisances and conditions dangerous to life or health, but grants the District authority, through the Department of Housing and Community Development, to enforce compliance with a valid order revoking a sign permit. *Auger v. D.C. Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

Board of Appeals and Review does not have jurisdiction over Department of Housing and Community Development's enforcement of permit revocation under this section. *Auger v. D.C. Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

§ 5-514. Inspection of buildings for violative conditions; interference with inspection.

For the purpose of carrying into effect § 5-513, the Mayor of the District of Columbia and all other persons, including contractors and employees of contractors acting under his authority or by his direction, are authorized to enter upon and into any lands and tenements in said District, during all reasonable hours, to inspect the same and to do whatever may be necessary to correct, in a good and workmanlike manner, any condition that exists on or has arisen from such lands or tenements in violation of law or of any regulation made by authority of law, with the correction of which condition the owner of said lands or tenements is by law or such regulation chargeable. Any person who shall hinder, interfere with, or prevent any inspection or work authorized by §§ 5-513 to 5-515 shall, upon conviction thereof, be punished by a fine not exceeding \$100 or by imprisonment for a period not exceeding 3 months, or by both such fine and imprisonment, in the discretion of the court. (Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 2; 1973 Ed., § 5-314.)

Section references. — This section is referred to in §§ 5-513 and 5-515.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-515. Notice requiring correction of unlawful conditions; service.

For the purposes of §§ 5-513 to 5-515, any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served: (1) if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; (2) if no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; (3) if no such office can be found in said District by reasonable search, if forwarded by registered mail or by certified mail to the last-known address of the person to be notified and not returned by the post office authorities; (4) if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by clause (3) of this section be returned by the post office authorities, if published on 3 consecutive days in a daily newspaper published in the District of

Columbia; or (5) if by reason of an outstanding, unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of §§ 5-513 to 5-515 be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the unlawful condition to be corrected; and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so. (Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 3; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(43); 1973 Ed., § 5-315.)

Cross references. — As to certified mail return receipts as prima facie evidence of delivery, see § 14-506.

Section references. — This section is referred to in §§ 5-513 and 5-514.

Municipality must provide essential utility services. — The municipality must provide essential utility services to tenants in substan-

dard housing faced with a cut off of such services, but it may recoup any money expended by assessing a tax against the property or by levying fines against the owner. *Masszonía v. Washington*, 315 F. Supp. 529 (D.D.C. 1970).

Cited in *Auger v. D.C. Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

§ 5-516. Fees for inspection of buildings; fees for annual hauling permits for certain multi-axle motor vehicles.

(a) The Mayor of the District of Columbia is authorized and directed, from time to time, to prescribe a schedule of fees to be paid for inspecting passenger elevators and for inspecting hotels, public halls, moving-picture shows, theaters, and other places of amusement which are required to have annual licenses, and for inspecting buildings which are required by law to have fire escapes; and he is further authorized and directed to impose fees for all inspections of service to be performed by any public officer or employee of the District of Columbia under any law or regulation in force July 11, 1919, or thereafter enacted; said fees to cover the cost and expense of such inspections or service; and a schedule of such fees shall be printed and conspicuously displayed in the office of the said Mayor, and said fees shall be paid to the Collector of Taxes, District of Columbia, and paid for each fiscal year into the Treasury of the United States to the credit of the General Fund of the District of Columbia. Notwithstanding the provisions of the preceding sentence, in the case of a single unit motor vehicle which has 3 or more axles and is designed

to unload itself and which is operated in the District of Columbia under an annual hauling permit of the District of Columbia, the fee for such permit shall be as follows:

- (1) \$680 if such motor vehicle is first placed in service after July 1, 1970;
- (2) If such motor vehicle is in service on or before July 1, 1970, and operated at a gross weight:

(A) In excess of the weight permitted under normal operations under applicable regulations of the Mayor of the District of Columbia but less than 50,000 pounds, a fee of \$380;

(B) Of 50,000 pounds or more but less than 55,000 pounds, a fee of \$480;

(C) Of 55,000 pounds or more but less than 60,000 pounds, a fee of \$580; or

(D) Of 60,000 pounds or more, not to exceed 65,000 pounds, a fee of \$680.

(b) The Mayor of the District of Columbia is authorized to increase, from time to time, the fees prescribed by paragraphs (1) and (2) of subsection (a) of this section, taking into account expenditures for the purpose of repairing or replacing highway structures and roadway pavements requiring such repair or replacement as a result of the operation of the motor vehicles for which hauling permit fees are prescribed under the preceding sentence. Proceeds from fees from annual hauling permits for such vehicles shall be deposited in the highway fund created by § 47-2301. (July 11, 1919, 41 Stat. 69, ch. 7; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Jan. 5, 1971, 84 Stat. 1930, Pub. L. 91-650, title I, § 104(a); 1973 Ed., § 5-316; May 10, 1989, D.C. Law 7-231, § 17, 36 DCR 492.)

Cross references. — As to disposition of fees, see § 47-127.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organiza-

tion Order No. 121, dated December 12, 1957, which provided that the Finance Office, consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division, would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3,

dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96 dated March 7, 1969.

§ 5-517. Interstate agreement concerning hauling permit fees for certain multi-axle motor vehicles.

The Mayor of the District of Columbia may enter into an interstate agreement with the Commonwealth of Virginia or with the State of Maryland, or with both, which shall stipulate that any person: (1) Who operates in the District of Columbia and in the state which is a party to the agreement a single unit motor vehicle which has 3 or more axles and which is designed to unload itself; (2) who has registered that motor vehicle in the District of Columbia or in that state; and (3) who but for the agreement is required to pay the fee for an annual hauling permit prescribed by § 5-516, and a similar fee imposed on the motor vehicle by that state, shall not be required to pay a fee described in clause (3) of this section which is imposed by a jurisdiction other than the jurisdiction in which the motor vehicle is registered. If the Mayor enters into an interstate agreement under this section, he may adjust the annual hauling permit fees of the District of Columbia referred to in clause (3) of this section so that the total amount of fees (including registration and inspection fees) required for the operation in the District of Columbia and in each state which is a party to such agreement of the vehicles referred to in clause (1) of this section shall be uniform. (June 30, 1972, 86 Stat. 392, Pub. L. 92-327, § 1; 1973 Ed., § 5-316a.)

Cross references. — As to exemption from registration of nonresidents, see § 40-303.

§ 5-518. Regulations authorized concerning means of egress and fire safety appliances.

The Council of the District of Columbia, for protection against fire, is hereby authorized, after public hearing, to promulgate regulations to require the owner entitled to the beneficial use, rental, or control of any building now existing or hereafter erected, other than a private dwelling, which is 3 or more stories or over 30 feet in height, or is used as a hospital, school, asylum, sanitarium, convalescent home, or for similar use, or as a place of amusement, public assembly, restaurant, or for similar use, to provide, install and maintain sufficient and suitable means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs

and striking stations, and such other appliances as the Council may deem necessary for such buildings. (Dec. 24, 1942, 56 Stat. 1083, ch. 818, § 1; 1973 Ed., § 5-317.)

Section references. — This section is referred to in §§ 5-519, 5-520, 5-521, 5-522, 5-523, 5-524, and 47-2802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(119) Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Personal notice to property owners of public hearing dealing with regulations is unnecessary; the notice requirement is met by publication and by mailings to interested organizations. *Jones v. District of Columbia*, 212 F. Supp. 438 (D.D.C. 1962), *aff'd*, 323 F.2d 306 (D.C. Cir. 1963).

Facts developed at hearing as basis for regulations. — Facts developed at a public hearing held before the promulgation of regulations do not necessarily have to support each and every provision of the regulations which result therefrom. *Jones v. District of Columbia*,

212 F. Supp. 438 (D.D.C. 1962), *aff'd*, 323 F.2d 306 (D.C. Cir. 1963).

Applicability of regulations. — Where, after the institution of an action for possession based on an allegedly unlawful use of leased premises, the provisions of § 5-501 are relaxed and the use complained of becomes lawful, the tenant is entitled to the protection of the regulations under this section. *Cosby v. Shoemaker*, App. D.C., 34 A.2d 27 (1943).

Provisions of the Building Code are protected by a presumption of constitutionality, and they cannot be declared unconstitutional unless they are clearly arbitrary. *Jones v. District of Columbia*, 323 F.2d 306 (D.C. Cir. 1963).

Regulations constitutional. — The regulations promulgated under this section are not unconstitutional on the theory of vagueness, even though they are drawn in technical language which cannot be understood by laymen because such language is understandable by persons with knowledge in the field. *Jones v. District of Columbia*, 212 F. Supp. 438 (D.D.C. 1962), *aff'd*, 323 F.2d 306 (D.C. Cir. 1963).

The regulations promulgated under this section are not unconstitutional merely because they grant discretion to an administrative officer to grant variances in limited cases. *Jones v. District of Columbia*, 323 F.2d 306 (D.C. Cir. 1963).

A regulation which requires the correction of deficiencies in existing rooming houses is not so burdensome as to make compliance unreasonably onerous or constitute a confiscation of property, especially where an owner may apply for the grant of a variance if compliance seems unduly burdensome. *Jones v. District of Columbia*, 212 F. Supp. 438 (D.D.C. 1962), *aff'd*, 323 F.2d 306 (D.C. Cir. 1963).

§ 5-519. Occupancy after receipt of notice.

It shall be unlawful for any person to occupy any building 30 days after notice in writing from the Mayor of the District of Columbia or his designated agents that the owner entitled to the beneficial use, rental, or control of any building has failed or neglected to comply with the notice provided for by § 5-520 to provide any such building with means of egress or appliances required by the regulations promulgated by the Council of the District of Columbia under § 5-518. (Dec. 24, 1942, 56 Stat. 1083, ch. 812, § 2; 1973 Ed., § 5-318.)

Section references. — This section is referred to in §§ 5-521, 5-522, 5-524, and 47-2802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Landlord obligated to obtain new occupancy certificate. — A temporary certificate of occupancy issued to a landlord does not relieve him from the obligation to obtain a new certificate of occupancy under a subsequently promulgated building code. *Jones v. District of Columbia*, 323 F.2d 306 (D.C. Cir. 1963).

§ 5-520. Notice requiring installation of means of egress or fire safety appliances.

The notice from the Mayor of the District of Columbia requiring the erection of means of egress and other appliances required by the regulations promulgated under § 5-518 shall specify the character and number of means of egress or other appliances to be provided, the location of the same, and the time within which said means of egress or other appliances shall be provided, and in no case shall more than 90 days be allowed for compliance with said notice unless the Mayor shall, in his discretion, deem it necessary to extend their time. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 3; 1973 Ed., § 5-319.)

Section references. — This section is referred to in §§ 5-519, 5-521, 5-522, 5-523, 5-524, and 47-2802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-521. Violation of §§ 5-518 to 5-524.

Any owner entitled to the beneficial use, rental, or control of any building failing or neglecting to provide means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, or other appliances required by the regulations promulgated under §§ 5-518 to 5-524 after notice from the Mayor of the District of Columbia or his designated agents so to do, shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$100 per day for each and every day he fails to comply with such notice. Any person violating any other provision of §§ 5-518 to 5-524 or regulations promulgated hereunder

shall be punished, upon conviction thereof, by a fine of not less than \$10 nor more than \$100 per day for each and every day such violation exists. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 4; 1973 Ed., § 5-320.)

Section references. — This section is referred to in §§ 5-522, 5-523, 5-524, and 47-2802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-522. Service of notice.

Any notice required by §§ 5-518 to 5-524 shall be deemed to have been served if delivered to the person to be notified or left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or, if no such residence or place of business can be found in said District of Columbia by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or, if no such office can be found in said District, by reasonable search, if forwarded by registered mail or by certified mail to the last known address of the person to be notified and not returned by the post office authorities, or, if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post office authorities, if published on 10 consecutive days in a daily newspaper published in the District of Columbia, or, if by reason of an outstanding unrecorded transfer of title, the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore provided or delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of §§ 5-518 to 5-524, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the services of notices on natural persons holding property in their own right, or if no such officer can be found in said District by reasonable search, then by publication for 10 consecutive days in a daily newspaper published in the District of Columbia, and notice to a foreign corporation shall, for the purposes of §§ 5-518 to 5-524, be deemed to have been served if served on any agent of such corporation personally or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia, or if published on 10 consecutive days in a daily newspaper pub-

lished in the District of Columbia. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 5; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(44); 1973 Ed., § 5-321.)

Cross references. — As to certified mail return receipts as prima facie evidence of delivery, see § 14-506.

Section references. — This section is referred to in §§ 5-521, 5-523, 5-524, and 47-2802.

§ 5-523. Failure of owner to comply with notice.

In case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any building required by the regulations promulgated under §§ 5-518 to 5-524 to comply with the requirements of the notice provided for in § 5-520, the Mayor of the District of Columbia or his designated agents are hereby empowered to cause such construction and installation of means of egress and other appliances mentioned in the notice provided for, and the Mayor is hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, said assessment to bear interest at the rate and be collected in the manner provided in § 47-1205. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 6; 1973 Ed., § 5-322.)

Section references. — This section is referred to in §§ 5-521, 5-522, 5-524, and 47-2802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-524. Injunction to restrain use of building in violation of §§ 5-518 to 5-524.

The Superior Court of the District of Columbia, in term time or in vacation, may upon a petition of the District of Columbia filed by its said Mayor, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of §§ 5-518 to 5-524 or of the regulations promulgated under §§ 5-518 to 5-524 by the owner, lessee, or occupant. (Dec. 24, 1942, 56 Stat. 1085, ch. 818, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(17); 1973 Ed., § 5-323.)

Section references. — This section is referred to in §§ 5-521, 5-522, 5-523, and 47-2802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-525. Alterations to rental units causing violations of housing regulations after notice to vacate — Prohibited.

Notwithstanding any other provision of law except §§ 5-526 and 5-527, no person shall, during the period of time after the giving of a notice to vacate any rental unit (as defined by subchapter IV of Chapter 25 of Title 45) and before the actual vacation of such unit, cause any alteration to the structure, plumbing apparatus, or electrical apparatus of the housing accommodation (as defined by subchapter IV of Chapter 25 of Title 45) in which such unit is located, the result of which alteration is to cause such rental unit to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the housing regulations of the District of Columbia for a period of time in excess of 24 hours; provided, that it shall not be a defense to an allegation of a violation of this section that the notice to vacate was invalid. (1973 Ed., § 5-324; Apr. 23, 1977, D.C. Law 1-129, § 2, 23 DCR 9693.)

Section references. — This section is referred to in §§ 5-526, 5-527, and 5-528.

Legislative history of Law 1-129. — Law 1-129, the "Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate" was introduced in Council and assigned Bill No. 1-360, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on October 12, 1976, and November 23, 1976, respectively. Enacted without signature by the

Mayor on January 9, 1977, it was assigned Act No. 1-223 and transmitted to both Houses of Congress for its review.

References in text. — The references to "subchapter IV of Chapter 25 of Title 45" originally read "subchapter IV of Chapter 15 of Title 45"; however the provisions of former § 45-1551 expired and have been superseded by the provisions of § 45-2541. See notes to §§ 45-1551 and 45-2541.

§ 5-526. Same — Exemption by consent of tenants.

Section 5-525 shall not apply to any person performing any alteration upon any housing accommodation if the tenants of unvacated rental units, which are the subject of notices to vacate and which can reasonably be expected to be caused by the alteration to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the housing regulations of the District of Columbia for a period of time in excess of 24 hours, agree in writing to the alteration after receiving written notice of the alteration and its effect upon the habitability of the affected units. (1973 Ed., § 5-325; Apr. 23, 1977, D.C. Law 1-129, § 3, 23 DCR 9693.)

Section references. — This section is referred to in § 5-525.

Legislative history of Law 1-129. — See note to § 5-525.

§ 5-527. Same — Exemption by Mayor.

The Mayor of the District of Columbia, or his designee, may grant an exemption from the provisions of § 5-525 in the event he, or his designee, inspects a housing accommodation wherein there are unvacated units subject to a notice to vacate and finds that a proposed alteration, while it may cause such a rental unit to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the housing regulations of the District of Columbia for a period of time in excess of 24 hours, is, nevertheless, necessary for the immediate safety of the habitants of the accommodation. (1973 Ed., § 5-326; Apr. 23, 1977, D.C. Law 1-129, § 4, 23 DCR 9693.)

Section references. — This section is referred to in § 5-525.

Legislative history of Law 1-129. — See note to § 5-525.

§ 5-528. Same — Penalty.

Any person violating § 5-525 shall be imprisoned for not more than 10 days, fined not more than \$300, or both. (1973 Ed., § 5-327; Apr. 23, 1977, D.C. Law 1-129, § 5, 23 DCR 9693.)

Legislative history of Law 1-129. — See note to § 5-525.

§ 5-529. Smoke detectors — Definitions.

As used in §§ 5-529 to 5-538:

(1) The term "dwelling unit" means a structure, building, area, room, or combination of rooms occupied by persons for sleeping or living.

(2)(A) The term "hospital" means a building or part thereof used for the medical, psychiatric, obstetrical, or surgical care, on a 24-hour basis, of inpatients.

(B) The term "hospital" includes general hospitals, mental hospitals, tuberculosis hospitals, children's hospitals, and any such facilities providing inpatient care.

(3)(A) The term "nursing home" means a building, or part thereof, used for the lodging, boarding, and nursing care, on a 24-hour basis, of persons who, because of mental or physical incapacity, may be unable to provide for their own needs and safety without the assistance of another person.

(B) The term "nursing home" includes nursing and convalescent homes, skilled nursing facilities, intermediate care facilities, and infirmaries of homes for the aged.

(4)(A) The term "owner" means any person who, alone or jointly or severally with other persons, has legal title to any premises.

(B) The term "owner" includes any person who has charge, care, or control over any premises as:

(i) An agent, officer, fiduciary, or employee of the owner;

(ii) The committee, conservator, or legal guardian of an owner who is non compos mentis, a minor, or otherwise under a disability;

(iii) A trustee, elected or appointed, or a person required by law to execute a trust, other than a trustee under a deed of trust, to secure the payment of money; or

(iv) An executor, administrator, receiver, fiduciary, officer appointed by any court, or other similar representative of the owner or his estate.

(C) The term "owner" does not include a lessee, sublessee, or other person who merely has the right to occupy or possess a premises.

(5)(A) The term "residential-custodial care facility" means a building, or part thereof, used for the lodging or boarding of persons who are incapable of self-preservation because of age or physical or mental limitation, or who are detained for correctional purposes.

(B) The term "residential-custodial care facility" includes homes for the aged, nurseries (custodial care for children under 6 years of age), institutions for the mentally retarded (care institutions), and halfway houses, as well as sheltered living facilities and halfway houses operated by the District of Columbia Department of Corrections and District of Columbia Department of Human Resources.

(C) The term "residential-custodial care facility" does not include day care facilities that do not provide lodging or boarding for institutional occupants.

(6)(A) The term "sleeping area" means a bedroom or room intended for sleeping, or a combination of bedrooms or rooms intended for sleeping within a dwelling unit, which are located on the same floor and are not separated by another habitable room, such as a living room, dining room, or kitchen, but not a bathroom, hallway, or closet. A dwelling unit may have more than 1 sleeping area.

(B) The term "sleeping area" does not include common usage areas in structures with more than 1 dwelling unit, such as corridors, lobbies, and basements.

(7) The term "smoke detector" means a device which detects visible or invisible particles of combustion.

(8) The term "substantially rehabilitated" means any improvement to a structure which is valued greater than one-half of the assessed valuation of the property including the land.

(9) The term "visual alert system" means a visual warning device or system that, when activated by or in conjunction with an audible smoke detector and warning system, provides a light signal sufficient to warn a deaf or hearing-impaired person of the presence of fire or smoke. The term "visual alert system" shall include a visual warning system that has multiple functions if 1 of the functions of the system is to warn a deaf or hearing-impaired person of the presence of fire or smoke. (1973 Ed., § 5-328; June 20, 1978, D.C. Law 2-81, § 2, 24 DCR 9050; Mar. 9, 1988, D.C. Law 7-84, § 2(a), 34 DCR 8122.)

Section references. — This section is referred to in §§ 5-530, 5-531, 5-532, 5-534, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — Law

2-81, the "Smoke Detector Act of 1978," was introduced in Council and assigned Bill No. 2-157, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on February 21, 1978, and March 7, 1978, respectively. Signed by the Mayor on April 17, 1978, it was assigned Act No. 2-178 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-84. — See note to § 5-530.1.

Editor's notes. — In the introductory language of this section, "5-538" has been substituted for "5-536" to reflect the addition of sections to D.C. Law 2-81 by D.C. Law 5-139.

§ 5-530. Same — General requirements.

(a) The owner of each new or existing dwelling unit, hotel, motel, hospital, nursing home, and residential-custodial care facility shall install smoke detectors as required by §§ 5-529 to 5-538. The Mayor shall install smoke detectors in each dwelling unit, hospital, nursing home, jail, prison, and residential-custodial care facility owned by the District of Columbia.

(b) The owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison, and residential-custodial care facility which is constructed or substantially rehabilitated under a building permit issued after September 30, 1978, shall install smoke detectors as required by §§ 5-529 to 5-538. No certificate of occupancy may be issued for any dwelling unit, hotel, motel, hospital, nursing home, or residential-custodial care facility unless smoke detectors have been installed as required by §§ 5-529 to 5-538.

(c) The owner of each dwelling unit, hotel, motel, and hospital, except as provided in subsections (b) and (d) of this section, shall install smoke detectors as required by §§ 5-529 to 5-538 within 3 years of June 20, 1978.

(d) The Mayor shall install smoke detectors, as required by §§ 5-529 to 5-538, in each dwelling unit, hospital, jail and prison owned by the District of Columbia, except as provided in subsection (b) of this section, within 2 years of June 20, 1978.

(e) Except as provided in subsection (b) and except as provided in § 14(d) of Title VII of the Health Care and Community Residence Facilities Regulation, enacted June 14, 1974 (Reg. No. 74-15):

(1) The owner of each residential-custodial care facility and nursing home shall install smoke detectors as required by §§ 5-529 to 5-538 by January 1, 1980;

(2) The Mayor shall install smoke detectors as required by §§ 5-529 to 5-538 in each residential-custodial care facility and nursing home owned by the District of Columbia by January 1, 1980. (1973 Ed., § 5-329; June 20, 1978, D.C. Law 2-81, § 3, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(a)-(e), 26 DCR 2082.)

Section references. — This section is referred to in §§ 5-529, 5-531, 5-532, 5-534, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

Legislative history of Law 3-42. — Law 3-42, the "Regulation Enforcement and Fire Safety Amendment Act of 1979," was introduced in Council and assigned Bill No. 3-150, which was referred to the Committee on the Judiciary and the Committee on Human Re-

sources. The Bill was adopted on first and second readings on September 25, 1979, and October 9, 1979, respectively. Signed by the Mayor on October 30, 1979, it was assigned Act No. 3-114 and transmitted to both Houses of Congress for its review.

Editor's notes. — Throughout this section, "5-538" has been substituted for "5-536" to reflect the addition of sections to D.C. Law 2-81 by D.C. Law 5-139.

§ 5-530.1. Same — Visual alert systems.

(a)(1) The owner of each hotel or motel shall have available on the premises at least 1 visual alert system for every 50 units or less.

(2) Each hotel or motel shall provide a visual alert system to any guest or patron upon request. In circumstances in which the number of requests for visual alert systems exceeds the number of visual alert systems available, the hotel or motel shall make arrangements to procure additional systems, which shall be provided to the guest or patron within 8 hours of his or her request.

(3) A notice informing guests and patrons of the availability of visual alert systems for deaf or hearing-impaired persons shall be posted either conspicuously in the lobby of the hotel or motel or placed conspicuously in the room of each guest or patron.

(b) Upon the request of a deaf or hearing-impaired person, the owner of each dwelling unit, hospital, nursing home, or residential-custodial care facility shall provide a visual alert system in each room in which a deaf or hearing-impaired person resides.

(c) Upon the request of a deaf or hearing-impaired person, the Mayor shall provide a visual alert system in each dwelling unit, hospital, nursing home, jail, prison, or residential-custodial care facility owned by the District of Columbia in which a deaf or hearing-impaired person resides. (June 20, 1978, D.C. Law 2-81, § 3a, as added Mar. 9, 1988, D.C. Law 7-84, § 2(b), 34 DCR 8122.)

Legislative history of Law 7-84. — Law 7-84, the "Visual Alert Systems for the Deaf and Hearing-Impaired Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-96, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on November 10, 1987 and November 24, 1987, respectively. Signed by the Mayor on December 10, 1987, it was assigned Act No 7-119 and transmitted to both Houses of Congress for its review.

§ 5-531. Same — Locations.

(a) The owner of each dwelling unit shall install at least 1 smoke detector to protect each sleeping area. In an efficiency, the owner shall install the smoke detector in the room used for sleeping. In all other dwelling units, the owner shall install the smoke detector outside the bedrooms but in the immediate vicinity of the sleeping area.

(b) The owner of each hotel and motel shall install at least 1 smoke detector to protect each guest room or guest suite. The owner of each dormitory shall install at least 1 smoke detector to protect each resident room or resident suite. For the purpose of this subsection, "guest suite" or "resident suite" means a combination of rooms that are always occupied as a single unit. The owner of the hotel, motel or dormitory shall install the smoke detectors as directed by the Mayor of the District of Columbia.

(c) The owner of each hospital, nursing home, jail, prison, and residential-custodial care facility shall install smoke detectors as directed by the Mayor of the District of Columbia and as follows:

(1) In each corridor that is adjacent to a room used for sleeping, but in no case may the smoke detectors be spaced further apart than 30 feet or more than 15 feet from any wall; or

(2) In each room used for sleeping.

(d) An owner subject to §§ 5-529 to 5-538 shall install each smoke detector on the ceiling at a minimum of 6 inches from the wall, or on a wall at a minimum of 6 inches from the ceiling.

(e) An owner subject to §§ 5-529 to 5-538 may not install a smoke detector in a dead air space, such as where the ceiling meets the wall. (1973 Ed., § 5-330; June 20, 1978, D.C. Law 2-81, § 4, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(f), (g), 26 DCR 2082.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-532, 5-534, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

Legislative history of Law 3-42. — See note to § 5-530.

Editor's notes. — In (d) and (e), "5-538" has been substituted for "5-536" to reflect the addition of sections to D.C. Law 2-81 by D.C. Law 5-139.

§ 5-532. Same — Equipment.

(a) An owner subject to §§ 5-529 to 5-538 shall install a smoke detector which is capable of sensing visible or invisible particles of combustion and emitting an audible signal. The owner shall install a smoke detector which is of a type approved by the Mayor of the District of Columbia consistent with any appropriate federal regulations. The owner shall install a smoke detector in accordance with specifications of the manufacturer or in compliance with the National Fire Protection Association Standards 72-E and 74 (1974 Edition).

(b) Within 40 days after June 20, 1978, and before approving any type of smoke detector pursuant to this section, the Mayor of the District of Columbia or his designated agent shall hold a public hearing at which he shall consider, in addition to any other matter he considers relevant, any potential radiological danger presented by any of the types of smoke detectors under consideration. (1973 Ed., § 5-331; June 20, 1978, D.C. Law 2-81, § 5, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(g), 26 DCR 2082.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-534, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

Legislative history of Law 3-42. — See note to § 5-530.

Editor's notes. — In (a), "5-538" has been substituted for "5-536" to reflect the addition of sections to D.C. Law 2-81 by D.C. Law 5-139.

§ 5-533. Same — Installation.

(a) Except as provided in subsections (b) and (c) of this section, the owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison, and residential-custodial care facility shall directly wire the smoke detector to the power supply of the building.

(b) In each dwelling unit, hotel, motel, hospital, nursing home, jail, prison, and residential-custodial care facility which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a smoke detector which operates from a plug-in outlet fitted with a plug restrainer device if the outlet is not controlled by an on-off switch and if the cord connecting the smoke detector with the outlet is not controlled by an on-off switch.

(c) In each dwelling unit in a structure with only 1 dwelling unit which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a monitored battery-powered smoke detector. (1973 Ed., § 5-332; June 20, 1978, D.C. Law 2-81, § 6, 24 DCR 9050.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-532, 5-534, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

§ 5-534. Same — Maintenance.

An owner subject to §§ 5-529 to 5-538 shall maintain each smoke detector in a reliable operating condition and shall make periodic inspections and tests to ensure that each smoke detector is in proper working condition. (1973 Ed., § 5-333; June 20, 1978, D.C. Law 2-81, § 7, 24 DCR 9050.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-532, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

Editor's notes. — In this section, "5-538" has been substituted for "5-536" to reflect the addition of sections to D.C. Law 2-81 by D.C. Law 5-139.

§ 5-535. Same — Permits.

No owner may permanently wire a smoke detector to the electrical system of a structure without first obtaining an electrical permit from the Permit Division of the Department of Licenses, Investigation and Inspections. (1973 Ed., § 5-334; June 20, 1978, D.C. Law 2-81, § 8, 24 DCR 9050.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-532, 5-534, 5-536, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

§ 5-536. Same — Other applicable standards.

Any person who installs a smoke detector shall comply with the requirements of §§ 5-529 to 5-538 and the National Fire Protection Association Standards 72-E and 74 (1974 Edition). In the event of a conflict between §§ 5-529 to 5-538 and the National Fire Protection Association Standards 72-E and 74 (1974 Edition), §§ 5-529 to 5-538 take precedence. (1973 Ed., § 5-335; June 20, 1978, D.C. Law 2-81, § 9, 24 DCR 9050.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-532, 5-534, 5-537, and 5-538.

Legislative history of Law 2-81. — See note to § 5-529.

Editor's notes. — In this section, "5-538" has been substituted for "5-536" to reflect the addition of sections to D.C. Law 2-81 by D.C. Law 5-139.

§ 5-537. Same — Civil penalties.

(a)(1) An owner of a single-family residence who fails to comply with the provisions of §§ 5-529 to 5-538 shall be assessed a civil penalty of \$100 for each violation.

(2) An owner of a building containing 2, 3, or 4 dwelling or rooming units who fails to comply with the provisions of §§ 5-529 to 5-538 shall be assessed a civil fine of \$200 for each violation.

(3) An owner of a building containing 5 or more dwelling units or any hotel, motel, hospital, nursing home, or residential custodial care facility unit who fails to comply with the provisions of §§ 5-529 to 5-538 shall be assessed a civil penalty of \$300 for each violation.

(b) For the purpose of this section, each day a dwelling unit, hotel, motel, hospital, nursing home, or residential custodial care facility fails to comply with §§ 5-529 to 5-538 shall constitute a separate violation.

(c)(1) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of §§ 5-529 to 5-538, or any rules or regulations issued under the authority of §§ 5-529 to 5-538, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of §§ 5-529 to 5-538 shall be pursuant to Chapter 27 of Title 6.

(2) After a 45-day period of Council review, the Mayor shall issue the procedures described in paragraph (1) of this subsection pursuant to subchapter I of Chapter 15 of Title 1, provided that the Council of the District of Columbia does not disapprove the rules, by resolution, within 45 days of their submission to the Council, excluding Saturdays, Sundays, holidays, and days during which the Council is in recess.

(d) To enforce §§ 5-529 to 5-538, the Mayor may seek either the civil penalties in this section or the criminal penalties in § 2104 of The Housing Code of the District of Columbia or § 5-1306(a) and (b), but the Mayor shall not seek both the civil penalties and the criminal penalties to enforce a related series of violations. (June 20, 1978, D.C. Law 2-81, § 9a, as added Mar. 13, 1985, D.C. Law 5-139, § 2, 31 DCR 5751; Mar. 21, 1987, D.C. Law 6-216, § 13(e), 34 DCR 1072; May 10, 1989, D.C. Law 7-231, § 19, 36 DCR 492; Mar. 8, 1991, D.C. Law 8-237, § 29, 38 DCR 314.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-532, 5-534, 5-536, and 5-538.

Legislative history of Law 5-139. — Law 5-139, the "Smoke Detector Act of 1978 Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-418, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 12, 1984, and October 9,

1984, respectively. Signed by the Mayor on October 25, 1984, it was assigned Act No. 5-197 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-216. — See note to § 5-512.

Legislative history of Law 7-231. — See note to § 5-516.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Reg-

ulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on De-

cember 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

References in text. — "Section 2104 of The Housing Code of the District of Columbia," referred to in subsection (d) of this section, is classified to 14 DCMR § 102.1.

§ 5-538. Same — Installation by tenant.

(a) A tenant of a dwelling unit that is not in compliance with §§ 5-529 to 5-538 may purchase, install, and maintain a smoke detector or visual alert system, or arrange for proper installation and maintenance of a smoke detector or visual alert system, and may deduct the reasonable costs from the rent for the dwelling unit. No tenant shall be charged, evicted, or penalized in any fashion for failure to pay the reasonable cost deducted from the rent for the dwelling unit.

(b) In units required to have a smoke detector or visual alert system directly wired to the power supply of the building, and where the landlord fails to install and maintain the smoke detector or visual alert system, the tenant may purchase, install, and maintain battery-operated units at the owner's expense.

(c) No act or omission by a tenant under this section shall relieve the owner of responsibility to ensure full and continuing compliance with §§ 5-529 to 5-538, nor shall an act or an omission relieve the owner of liability for failure to comply with §§ 5-529 to 5-538.

(d) Nothing in this section shall be construed to impose a penalty or other liability on a tenant for failure to install or maintain a smoke detector or visual alert system, nor shall this section be construed to mean that a tenant who fails to install or maintain a smoke detector or visual alert system is contributorily negligent. (June 20, 1978, D.C. Law 2-81, § 9b, as added Mar. 13, 1985, D.C. Law 5-139, § 2, 31 DCR 5751; Mar. 9, 1988, D.C. Law 7-84, § 2(c), 34 DCR 8122.)

Section references. — This section is referred to in §§ 5-529, 5-530, 5-531, 5-532, 5-534, 5-536, and 5-537.

Legislative history of Law 5-139. — See note to § 5-537.

Legislative history of Law 7-84. — See note to § 5-530.1.

CHAPTER 6. UNSAFE STRUCTURES.

Sec.

5-601. Unsafe structure or excavation — Inspection; owner to remove or secure; Mayor may take immediate action; "Mayor" defined.

5-602. Same — Survey of premises.

5-603. Same — Failure of owner to make safe.

5-604. Dangerous nuisances; notice to abate; failure to abate; life-or-health threatening condition on vacant lot.

Sec.

5-605. Costs of work performed by Mayor assessed against property; violation of §§ 5-601 to 5-603; costs of correcting life-or-health threatening condition.

5-606. Payment of cost assessed against property; sale of property for nonpayment.

5-607. Service of notice.

5-608. Occupation of unsafe structure.

§ 5-601. Unsafe structure or excavation — Inspection; owner to remove or secure; Mayor may take immediate action; "Mayor" defined.

(a) If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the Mayor shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12:00 noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; provided, however, that in a case where the public safety requires immediate action the Mayor may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby.

(b) The term "Mayor" means the Mayor of the District of Columbia or the agent or agents designated by him to perform any function vested in said Mayor by this chapter. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 1; Apr. 5, 1935, 49 Stat. 105, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, §§ 1, 2; 1973 Ed., § 5-501.)

Cross references. — As to building regulations, see §§ 1-319, 1-322, and 5-413. As to protections against flood hazards, see § 5-301 et seq.

Section references. — This section is referred to in §§ 5-605, 5-606, 5-1011, and 47-1205.

Soil Erosion and Sedimentation Control in Square 6126. — Title II, §§ 201-205, of D.C. Law 8-229 gave the Mayor powers to make an immediate determination of nature and cost of remedial actions for sediment control in Square 6126, power to undertake such

actions, power to prohibit activities in Square 6126, power to enter private property to carry out the actions, and power to levy an assessment on the property in Square 6126; however, expenditure of funds for remedial actions or permanent improvements other than in Square 6126 is not authorized, nor is any claim or right of relief for such actions created in any person by Title II.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section applies to a party wall in unsafe condition. District of Columbia v. Wentworth, 288 F.2d 421 (D.C. Cir. 1961).

District has a right to be reimbursed for the cost of razing a building declared so unsafe as to require immediate razing. Brown v. Tobriner, 312 F.2d 334 (D.C. Cir. 1962).

And lien for reimbursement for razing an unsafe structure is entitled to priority over notes secured by a prior recorded 2nd deed of trust on the property involved where no true mortgagor-mortgagee relationship exists between the parties. Brown v. Tobriner, 312 F.2d 334 (D.C. Cir. 1962).

Party abandons property which he refuses to retrieve following razing of his building. Block v. Fisher, App. D.C., 103 A.2d 575 (1954).

§ 5-602. Same — Survey of premises.

When the public safety does not, in the judgment of the Mayor, demand immediate action, if the owner, agent, or other party interested in said unsafe structure or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by 3 disinterested persons, 1 to be appointed by the Mayor of the District of Columbia, 1 by the owner or other person interested, and the 3rd to be chosen by these 2, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuses or neglects to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the Mayor, and the person chosen by the Mayor, and in case of disagreement they shall choose a 3rd person and the determination of a majority of the 3 so chosen shall be final. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 2; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, § 1; 1973 Ed., § 5-502.)

Section references. — This section is referred to in §§ 5-605 and 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section applies to a party wall in unsafe condition. District of Columbia v. Wentworth, 288 F.2d 421 (D.C. Cir. 1961).

§ 5-603. Same — Failure of owner to make safe.

Whenever the report of any such survey shall declare the structure or excavation to be unsafe, or shall state that structural repairs should be made in order to place the said structure or excavation in a fit condition for further occupancy or use, and the owner or other interested person shall for 10 days neglect or refuse to cause such structure or excavation to be taken down or otherwise to be made safe, the Mayor shall proceed to make such structure or excavation safe or remove the same. After the expiration of the 10 days in which the owner or other interested person is given to make the structure or excavation safe, or to be taken down or removed, the owner or other interested person, having failed to comply with the provision of the report of the board of survey, shall not enter, or cause to be entered, the premises for the purpose of making the repairs ordered, or razing the building, as the case may be, or in any other way to interfere with the authorized agents of the District of Columbia in making the said structure or excavation safe, or in removing same, without first having obtained the written consent of the Mayor of the District of Columbia or his duly authorized representatives. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 3; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, §§ 1, 3; 1973 Ed., § 5-503.)

Section references. — This section is referred to in §§ 5-605, 5-606, 5-1011, and 47-1205.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section applies to a party wall in unsafe condition. District of Columbia v. Wentworth, 288 F.2d 421 (D.C. Cir. 1961).

District has a right to be reimbursed for the cost of razing a building declared so unsafe as to require immediate razing. Brown v. Tobriner, 312 F.2d 334 (D.C. Cir. 1962).

And lien for reimbursement for razing an unsafe structure is entitled to priority over notes secured by a prior recorded 2nd deed of trust on the property involved where no true mortgagor-mortgagee relationship exists between the parties. Brown v. Tobriner, 312 F.2d 334 (D.C. Cir. 1962).

§ 5-604. Dangerous nuisances; notice to abate; failure to abate; life-or-health threatening condition on vacant lot.

(a) The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, any dead, dangerous or diseased tree, or part thereof, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety,

and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the Mayor of the District of Columbia, after 5 days notice from him to do so, shall, on conviction in the Superior Court of the District of Columbia be punished by a fine of not exceeding \$50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia on which there exists an open well, cistern, dangerous hole, or excavation, or any dead, dangerous, or diseased tree or part thereof, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within 1 week after the expiration of such notice, the said Mayor may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, or parts thereof, any miscellaneous accumulation of material or debris or any dead or dangerous tree or part thereof, or the removal or spraying of any diseased tree adversely affecting the public safety, health, comfort, and welfare, and double the cost and expense thereof shall be assessed by said Mayor as a tax against the property on which such nuisance exists, and the tax so assessed shall be collected in the manner provided in § 5-606. Within the meaning of this section, a dead tree shall be any tree with respect to which the Mayor of the District of Columbia or his designated agent have determined that no part thereof is living; a dangerous tree is any tree or part thereof, living or dead, which the said Mayor or his designated agent shall find is in such condition and is so located as to constitute a danger to persons or property on public space in the vicinity of such tree; and a diseased tree shall be any tree on private property in such a condition of infection from a major pathogenic disease as to constitute, in the opinion of the said Mayor or his designated agent, a threat to the health of any other tree.

(b) The authority conferred on the Mayor under subsection (a) of this section with respect to the removal of dangerous and diseased trees constituting a nuisance shall be exercised by the Mayor only after every reasonable effort has been made to abate such nuisance other than by the removal of any such tree, or part thereof.

(c) Where the Mayor determines that there exists a life-or-health threatening condition on a vacant lot, the notice required by this chapter shall be deemed to have been served if the owner or authorized agent is notified by personal service or by registered mail to the last known address and by conspicuous posting on the property. If the owner or owner's address is unknown, notice shall be provided by conspicuous posting on the property. A life-or-health threatening condition means a condition which imminently endangers the health or safety of persons in the area of the vacant lot. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 4; Apr. 5, 1935, 49 Stat. 107, ch. 41; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, § 4; July 29, 1970, 84 Stat. 570, Pub. L. 91-358,

title I, § 155(a); 1973 Ed., § 5-504; Apr. 23, 1977, D.C. Law 1-128, § 3, 23 DCR 9692; Mar. 10, 1983, D.C. Law 4-205, § 3, 30 DCR 188.)

Cross references. — As to the Abandoned and Junk Vehicle Division, see § 40-832. As to junk vehicles as nuisances, see § 40-833. As to requirement that resident agent maintain vacant property in District for nonresident owner, see § 45-1311.

Section references. — This section is referred to in §§ 5-513, 5-605, 5-606, and 5-1011.

Legislative history of Law 1-128. — Law 1-128, the "Nuisance Elimination Act of 1976," was introduced in Council and assigned Bill No. 1-303, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 23, 1976, and December 7, 1976, respectively. Enacted without signature by the Mayor on January 19, 1977, it was assigned Act No. 1-222 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-205. — Law 4-205, the "Summary Abatement of Life-or-Health Threatening Conditions Act of 1982," was introduced in Council and assigned Bill No. 4-459, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-289 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Purpose of § 5-513. — The need for a mechanism to abate various nuisances not specifically covered by §§ 5-604 through 5-608 and by other laws, especially those for which the responsible persons were not reachable by court process, was the principal purpose underlying enactment of § 5-513. *Auger v. D.C. Bd. of Appeals & Review*, App. D.C., 477 A.2d 196 (1984).

Safety obligations of District regarding tree. — The obligation of the District to assure a reasonable degree of safety on its streets required that it be alert to the presence of and carefully observe at periodic intervals an enormous, multi-trunked tree that was unusually susceptible to weakening and had a 90-foot overhanging stem weighing 10 tons, and the District had to be prepared to abate such hazards as its inspections revealed. *Husovsky v. United States*, 590 F.2d 944 (D.C. Cir. 1978).

Automobile not considered abandoned. — An automobile which either has a valid license tag or is virtually undamaged cannot reasonably be regarded as abandoned and no party has the right to tow away such an automobile. *Fogle v. United States*, App. D.C., 336 A.2d 833 (1975).

§ 5-605. Cost of work performed by Mayor assessed against property; violation of §§ 5-601 to 5-603; costs of correcting life-or-health threatening condition.

(a) The Mayor shall determine the cost and expense of any work performed by him under the authority of §§ 5-601 to 5-604, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness and willful recklessness in the demolition or removal of any structure) less the amount, if any, received from the sale of old material, and shall assess such costs and expense upon the lot or ground whereon such structure, excavation, or nuisance stands, stood, was dug, was located, or

existed, and this amount shall be collected in the manner provided in § 5-606. Any person, corporation, partnership, syndicate, or company subject to the provisions of §§ 5-601 to 5-603 who shall neglect or refuse to perform any act required by such sections shall be punished by a fine not exceeding \$50 for each and every day said person, corporation, partnership, syndicate, or company fails to perform any act required by such sections. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction by any person, corporation, partnership, syndicate, or company subject to the provisions of §§ 5-601 through 5-603 who shall neglect or refuse to perform any act required by these sections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6.

(b) The Mayor may assess all reasonable costs, including administrative costs, of correcting a life-or-health threatening condition pursuant to § 5-604 (c) and all expenses incident thereto as a tax against the property, may carry this tax on the regular tax rolls, and may collect this tax in the same manner as real estate taxes are collected. Monies in the revolving fund established by § 5-513(b)(1) shall be available to cover the costs of correcting life-or-health threatening conditions. Any amounts assessed and collected as a tax against real property pursuant to this section shall be deposited to the credit of the revolving fund. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5; Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 5; 1973 Ed., § 5-505; Mar. 10, 1983, D.C. Law 4-205, § 4, 30 DCR 188; Oct. 5, 1985, D.C. Law 6-42, § 472(a), 32 DCR 4450.)

Cross references. — As to requirement that resident agent maintain vacant property in District for nonresident owner, see § 45-1311.

Section references. — This section is referred to in § 5-1011.

Legislative history of Law 4-205. — See note to § 5-604.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-606. Payment of cost assessed against property; sale of property for nonpayment.

(a) Any tax authorized to be levied and collected under § 5-604, may be paid without interest within 60 days from the date such tax was levied. Interest of 20% per annum shall be charged on all unpaid amounts from the expiration of 60 days from the date such tax was levied. Any such tax may be paid in 3 equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of 2 years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

(b) For taxes authorized to be levied and collected under this chapter in accordance with §§ 5-601 and 5-603, the provisions of § 47-1205(b) and (c) shall apply. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 6; Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 5; 1973 Ed., § 5-506; Apr. 23, 1977, D.C. Law 1-128, § 4, 23 DCR 9692; Aug. 9, 1986 D.C. Law 6-135, § 14(f), 33 DCR 3771.)

Section references. — This section is referred to in §§ 5-604, 5-605, 5-1011, and 7-1039.

Legislative history of Law 1-128. — See note to § 5-604.

Legislative history of Law 6-135. — Law 6-135, the "Homestead Housing Preservation Act of 1986," was introduced in Council and

assigned Bill No. 6-168, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on June 13, 1986, it was assigned Act No. 6-173 and transmitted to both Houses of Congress for its review.

§ 5-607. Service of notice.

(a) Any notice required by this chapter to be served shall be deemed to have been served when served by any of the following methods: (1) When forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia, by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address; provided, that valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; (2) when delivered to the person to be notified; (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; (4) if no such residence or place of business can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; (5) if any such notice forwarded by registered or certified mail be returned for reasons

other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on 3 consecutive days in a daily newspaper published in the District of Columbia; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service, a copy of such notice shall also be sent to the owner by ordinary mail. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5; Apr. 5, 1935, 49 Stat. 107, ch. 41; Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 6; 1973 Ed., § 5-507.)

Section references. — This section is referred to in § 5-1011.

§ 5-608. Occupation of unsafe structure.

Whenever the Mayor finds that any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation shall cause a building to be unsafe for human occupancy, he shall give notice of such fact to the owner or other person having an interest in such building, and to the occupant or occupants thereof. If, within 5 days after such notice has been served upon such owner or other interested person, such building or part thereof has not been made safe for human occupancy, the Mayor may order the use of such building or part thereof discontinued until it has been made safe; provided, that if in the opinion of the Mayor the unsafe condition of the building or part thereof is such as to be imminently dangerous to the life or limb of any occupant, the Mayor may order the immediate discontinuance of the use of such building or part thereof. Any person occupying, or permitting the occupancy of, such building or part thereof in violation of such order of the Mayor shall be fined not more than \$300 or imprisoned for not more than 30 days. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction by any person occupying, or permitting the occupancy of, a building or part thereof in violation of the order of the Mayor, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 8; Aug. 22, 1964, 78 Stat. 601, Pub. L. 88-486, § 8; 1973 Ed., § 5-508; Oct. 5, 1985, D.C. Law 6-42, § 472(b), 32 DCR 4450.)

Section references. — This section is referred to in § 5-1011.

Legislative history of Law 6-42. — See note to § 5-605.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 7. INSANITARY BUILDINGS.

Sec.

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§ 5-701. Inspection of buildings authorized.

The Mayor of the District of Columbia is authorized to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be demolished and removed as may be required by the provisions of this chapter. The Mayor may authorize and direct the performance of the duties imposed on him by this chapter by such officers, agents, employees, contractors, employees of contractors, and other persons as may be designated, detailed, employed, or appointed by the said Mayor to carry out the purposes of this chapter. The Mayor or his designated agent or agents are authorized to investigate, through personal inquiry and inspection, into the sanitary condition of any building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. The Mayor, and all persons acting under his authority and the authority contained in this chapter, may, between the hours of 8:00 a.m. and 5:00 p.m., peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. (May 1, 1906, 34 Stat. 157, ch. 2073, § 1; Aug. 28, 1954, 68 Stat. 884, ch. 1032; 1973 Ed., § 5-616.)

Cross references. — As to building regulations, see §§ 1-319, 1-322, and 5-413. As to National Capital Housing Authority, see § 5-101 et seq. As to repair or removal of unsafe structures or excavations, see §§ 5-601 to 5-605.

Section references. — This section is referred to in § 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Govern-

mental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Condemnation procedures. — The condemnation procedures provide no more than the standard, routine administrative process of a form of notice and a particularized hearing, followed by judicial review of the outcome of the hearing; it is a general administrative scheme not specifically intended to remedy all federal rights violations, nor by its own terms

or by its history intended to supplant other congressionally provided forms of redress. *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

Procedural due process violations. — Plaintiff's §1983 action was not foreclosed by the provisions of the District's condemnation statute for the statute provides no remedy for procedural due process violations such as the lack of notice and further hearing alleged by plaintiff. *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

§ 5-702. Board for the Condemnation of Insanitary Buildings; Condemnation Review Board.

(a) The Mayor is directed to appoint or designate 2 separate boards, each to consist of not less than 3 members, to perform the duties and functions required by this chapter as follows:

(1) A Board for the Condemnation of Insanitary Buildings to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity, and to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of this chapter;

(2) A Condemnation Review Board, no member of which shall act as a member of the Board for the Condemnation of Insanitary Buildings, to review, upon written request, any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and to affirm, modify, or vacate such order of condemnation if the Condemnation Review Board shall find that the sanitary condition of the building under examination requires the affirmation, modification, or vacation of such order of condemnation. The Condemnation Review Board shall consist of at least 3 members and an alternate member for each of said members, at least two-thirds of such members and at least two-thirds of such alternate members to be residents of the District of Columbia and to be selected from among the persons designated under subsection (c) of this section, and not more than one-third of such members and one-third of such alternate members may be employed by the government of the District of Columbia.

(b) A majority of the members of each of the Boards established by subsection (a) of this section shall constitute a quorum, and a majority vote of the members present shall be required in connection with any act of either of the said Boards. No person shall act as a member of either of the said Boards who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

(c) The Mayor shall designate a number of real property owning residents of the District of Columbia, not employed by the government of the District of Columbia or the government of the United States, each of whom from time to

time shall be designated by the Mayor to act as a member or an alternate member of the Condemnation Review Board established under the authority of subsection (a) of this section.

(d) The several provisions of §§ 4-801, 4-802, and 4-803 shall be applicable to and enforceable in any proceeding conducted under the authority of this chapter. Each person acting as a member of either of the Boards required to be established by this section, and each alternate member when acting in the stead of the member for whom he is alternate, is hereby authorized to administer oaths to witnesses summoned in any proceeding conducted by either of the said Boards. Any fee which may be paid any witness summoned to appear before either of the said Boards shall be assessed as a tax against the property the condition of which is under investigation, such tax to be collected in the manner provided in § 5-707: Provided, that whenever any order of condemnation is vacated or set aside, either by the Condemnation Review Board or by a court, the witness fee authorized by this subsection to be assessed against the property affected by such order of condemnation shall not be so assessed, but shall be paid by the government of the District of Columbia. (May 1, 1906, 34 Stat. 157, ch. 2073, § 2; Aug. 28, 1954, 68 Stat. 884, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89-326, § 1; 1973 Ed., § 5-617; Mar. 3, 1979, D.C. Law 2-139, § 3205(qq), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632.)

Cross references. — As to building regulations, see §§ 1-319, 1-322, and 5-413. As to effective date of D.C. Law 2-139, see § 1-637.1. As to power and duties of Assistant Inspector of Buildings, see § 1-1026. As to National Capital Housing Authority, see § 5-101 et seq. As to repair or removal of unsafe structures or excavations, see §§ 5-601 to 5-605.

Section references. — This section is referred to in §§ 1-637.1, 5-713, 5-714, and 5-1011.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81, the "District of Columbia Government Comprehensive Merit Personnel Act Amendments of 1980," was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was

assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Order establishing Board for the Condemnation of Insanitary Buildings. — See Organization Order No. 102, 54-2034, dated September 27, 1954, as amended March 18, 1958, June 10, 1958, May 26, 1960, July 5, 1960, March 23, 1970, May 25, 1970, July 27, 1971, September 20, 1983, and by Reorganization Plan No. 3 of 1975.

Order establishing Condemnation Review Board. — See Organization Order No.

103, dated September 27, 1954, as amended April 23, 1957, and July 14, 1960.

§ 5-703. Condemnation procedure; occupancy of condemned buildings.

Whenever the Board for the Condemnation of Insanitary Buildings shall find that any building or part of building is in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, the owner of such building shall be served with a notice requiring him to show cause, within a time to be specified in such notice, why such building or part of building should not be condemned. The time to be fixed in such notice shall not be less than 10 days, exclusive of Sundays and legal holidays, after the date of service of said notice, unless the Board shall find that the insanitary condition of such building or part of building is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which case a lesser time may be specified in said notice. If within the time to show cause fixed by the Board, the owner shall fail to show cause sufficient in the opinion of the Board to prevent the condemnation of such building or part of building, the Board shall issue an order condemning such building or part of building and ordering the same to be put into sanitary condition or to be demolished and removed within a time to be specified in said order of condemnation, and shall cause a copy of such order to be served on the owner and a copy to be affixed to the building or part of building condemned. The Board shall give the owner reasonable time within which to put the building in sanitary condition, but such time shall be not less than 6 months after the date of service of said order on said owner, unless the Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the Board may fix a lesser time. From and after 15 days, exclusive of Sundays or legal holidays, or within such additional time as may be fixed by the Board, after a copy of any order of condemnation has been affixed to any condemned building or part of building, no person shall occupy such building or part of building. (May 1, 1906, 34 Stat. 1349, ch. 2073, § 3; Aug. 28, 1954, 68 Stat. 885, ch. 1032; 1973 Ed., § 5-618.)

Section references. — This section is referred to in §§ 5-716, 5-719, and 5-1011.

Section is constitutional. — *Keyes v. Madsen*, 179 F.2d 40 (D.C. Cir. 1949), cert. denied, 339 U.S. 928, 70 S. Ct. 628, 94 L. Ed. 1349 (1950).

The demolition of property pursuant to an order of the Board for Condemnation of Insanitary Buildings is a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

Testimony constituting admission of

guilt. — Where, in a prosecution for the occupancy of a condemned building, the defendant testifies that she lived in the building until the time of trial, this constitutes an admission of guilt. *Hammond v. District of Columbia*, App. D.C., 127 A.2d 554 (1956).

Procedural due process violations. — Plaintiff's §1983 action was not foreclosed by the provisions of the District's condemnation statute for the statute provides no remedy for procedural due process violations such as the lack of notice and further hearing alleged by plaintiff. *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

§ 5-704. Occupancy of condemned building.

No person having authority to prevent shall permit any building or part of building condemned to be occupied, except as specially authorized by the Board for the Condemnation of Insanitary Buildings under the authority contained in this chapter, after 15 days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from and after the date of service of a copy of the order of condemnation on the owner of such building; or, if a copy of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on the owner, after 15 days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from the date on which said copy of such order of condemnation was so affixed. (May 1, 1906, 34 Stat. 158, ch. 2073, § 4; Aug. 28, 1954, 68 Stat. 886, ch. 1032; 1973 Ed., § 5-619.)

Section references. — This section is referred to in §§ 5-706, 5-716, and 5-1011.

§ 5-705. Owner to repair or demolish condemned building.

The owner of any building or part of building condemned under the provisions of this chapter shall, within the time specified by the Board for the Condemnation of Insanitary Buildings in the order of condemnation, or any extension of time which may be granted by the Board: (1) Make such changes or repairs as will remedy the conditions which led to the condemnation of such building or part of building; or (2) cause such building or part of building to be demolished and removed: Provided, that any owner repairing a building or part of building in accordance with the provisions of this chapter shall be required to make only those repairs which are reasonably related to a correction of the insanitary condition or conditions found by said Board to exist in or about said building, and nothing in this chapter shall be construed as authorizing the Board to require any repair not reasonably related to the correction of any insanitary condition in or about such building, or to require such building to be brought fully into conformity with the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986. Whenever any building is repaired or demolished in accordance with the requirements of this section, such repair or demolition shall be performed in such manner and under the authority of such permit as may be required by any applicable law or regulation. (May 1, 1906, 34 Stat. 158, ch. 2073, § 5; Aug. 28, 1954, 68 Stat. 886, ch. 1032; 1973 Ed., § 5-620; Mar. 21, 1987, D.C. Law 6-216, § 13(f), 34 DCR 1072.)

Section references. — This section is referred to in §§ 5-716 and 5-1011.

Legislative history of Law 6-216. — Law 6-216, the "Construction Codes Approval and Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The

Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

References in text. — The "Construction

Codes Approval and Amendments Act of 1986," referred to in the first sentence, is D.C. Law 6-216.

Section constitutional. — The demolition of property pursuant to an order of the Board for Condemnation of Insanitary Buildings is a legitimate exercise of governmental power and

not a direct appropriation which would bring Fifth Amendment considerations into play. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

Cited in *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

§ 5-706. Cancellation of condemnation order; extensions of time.

If the owner of any building or part of building condemned under the provisions of this chapter shall make such changes or repairs as will remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the conditions which led to the condemnation of such building or part of building, the order of condemnation shall be canceled and the building may again be occupied. If the owner cannot make such changes or repairs within the period within which the owner may lawfully permit such building or part of building to be occupied under § 5-704, but proceeds with such changes or repairs with reasonable diligence during such period, said Board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein, and within which the owner of such building may permit the said occupants so to remain. (May 1, 1906, 34 Stat. 158, ch. 2073, § 6; Aug. 28, 1954, 68 Stat. 886, ch. 1032; 1973 Ed., § 5-621.)

Section references. — This section is referred to in § 5-1011.

§ 5-707. Failure of owner to comply with order; repair or demolition of building; cost assessed against property.

(a) If the owner of any building or part of building condemned under the provisions of this chapter shall fail to remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the condition or conditions which led to the condemnation thereof, by failing to cause such building or part of building to be put into sanitary condition or to be demolished and removed within the time specified by said Board in the order of condemnation or any extension thereof, he shall be deemed guilty of a misdemeanor and be liable to the penalties provided by § 5-716, and such building or part of building may be put into sanitary condition or be demolished and removed under the direction of said Board, and the cost of such repairs or such demolition and removal, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness or willful recklessness in the demolition or removal of such building), and the cost of publication, if any, herein provided for, less the amount, if any, received from the sale of the old material, shall be assessed by the Mayor of the District of Columbia as a tax against the premises on which such building or part of building was situated,

such tax to be collected as provided in this section; provided, that the pendency of any review or appeal provided for by §§ 5-713 and 5-714 shall stay the operation of any order issued by said Board, unless said Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity; provided further, that the taxes authorized to be levied and collected under this chapter may be paid without interest within 60 days from the date such tax was levied. Interest of one-half of one per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of 60 days from the date such tax was levied. Any such tax may be paid in 3 equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of 2 years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

(b) Any tax levied pursuant to this chapter as amended by the Act approved August 28, 1954, which was levied after the effective date of such Act of August 28, 1954, and prior to November 7, 1965, shall, for the purpose of computing interest thereon, be deemed to have been levied as of November 7, 1965. (May 1, 1906, 34 Stat. 158, ch. 2073, § 7; Aug. 28, 1954, 68 Stat. 886, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89-326, § 2; 1973 Ed., § 5-622.)

Section references. — This section is referred to in §§ 5-702, 5-716, and 5-1011.

References in text. — Act of August 28, 1954, referred to twice in subsection (b) of this section, amended §§ 5-701 to 5-719.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Required constitutional procedures in disposition of insanitary buildings. — Although local governments have an interest in the economic and expeditious resolution of questions involving the disposition of insanitary buildings, where governmental action seriously injures an individual or compromises his property rights, and the reasonableness of the action depends on fact-findings, due process requires no less than a timely hearing, a weighing of evidence, and at least a brief summary of the facts and rationale which sustain the final administrative decision. *Miles v. District of Columbia*, 354 F. Supp. 577 (D.D.C. 1973), *aff'd*, 510 F.2d 188 (D.C. Cir. 1975).

Measure of damages for wrongful demolition. — The use of replacement costs as the measure of damages to an owner of a building wrongfully demolished is not clearly erroneous. *Miles v. District of Columbia*, 510 F.2d 188 (D.C. Cir. 1975).

Cited in District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, 589 F.2d 628 (D.C. Cir. 1978); *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

§ 5-708. Litigation involving title to property.

Whenever the Board for the Condemnation of Insanitary Buildings is in doubt as to the ownership of any building or part of a building, the condemnation of which is contemplated, because the title thereto is in litigation, said Board may notify all parties to the suit and may report the circumstances to the Mayor of the District of Columbia, who may bring such circumstances to the attention of the court in which such litigation is pending for the purpose of securing such order or decree as will enable said Board to continue such condemnation proceedings, and such court is hereby authorized to make such decrees and orders in such pending suit as may be necessary for that purpose. (May 1, 1906, 34 Stat. 158, ch. 2073, § 8; Aug. 28, 1954, 68 Stat. 887, ch. 1032; 1973 Ed., § 5-623.)

Section references. — This section is referred to in § 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-709. Appointment of guardian for person non compos mentis or for infant.

Whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, the Board for the Condemnation of Insanitary Buildings shall report that fact to the Mayor of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by this chapter, and any judge of the court having probate jurisdiction is hereby authorized to appoint a guardian or guardians for such purpose. (May 1, 1906, 34 Stat. 159, ch. 2073, § 9; Aug. 28, 1954, 68 Stat. 887, ch. 1032; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 158(e); 1973 Ed., § 5-624.)

Section references. — This section is referred to in § 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-710. Service of notice.

(a) Any notice required by this chapter to be served shall be deemed served when served by any of the following methods: (1) When forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address; provided, that valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; (2) when delivered to the person to be notified; (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; (4) if no such residence or place of business can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; (5) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on 3 consecutive days in a daily newspaper published in the District of Columbia; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail. (May 1, 1906, 34 Stat. 159, ch. 2073, § 10; Aug. 28, 1954, 68 Stat. 887, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89-326, § 3; 1973 Ed., § 5-625.)

Section references. — This section is referred to in § 5-1011.

Due process may require registered or certified mail notice. — Where an owner expends a substantial sum of money to repair and improve buildings subject to a demolition order and the condition of the buildings materially change, due process requires no less than a

registered or certified mail notice of a subsequent decision to demolish. *Miles v. District of Columbia*, 354 F. Supp. 577 (D.D.C. 1973), aff'd, 510 F.2d 188 (D.C. Cir. 1975).

And group publication notice unsatisfactory. — The publication in a newspaper of a notice as to a proposed demolition of certain property does not satisfy due process where it

does not mention the property owner by name, but only lists all the properties involved by address in a group notice. *Miles v. District of Columbia*, 354 F. Supp. 577 (D.D.C. 1973), *aff'd*, 510 F.2d 188 (D.C. Cir. 1975).

Notice may be served upon the rental agent for the premises in accordance with this section and consistent with decided agency

law. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

Measure of damages for wrongful demolition. — The use of replacement costs as the measure of damages to an owner of a building wrongfully demolished is not clearly erroneous. *Miles v. District of Columbia*, 510 F.2d 188 (D.C. Cir. 1975).

§ 5-711. Interference with inspection or work.

No person shall interfere with the Mayor or with any person acting under authority and by direction of said Mayor in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this chapter to be done by or by authority and direction of said Mayor. (May 1, 1906, 34 Stat. 159, ch. 2073, § 11; Aug. 28, 1954, 68 Stat. 888, ch. 1032; 1973 Ed., § 5-626.)

Section references. — This section is referred to in §§ 5-716 and 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-712. Destruction, removal, or concealment of copy of order of condemnation affixed to building.

No person shall, without the consent of the Board for the Condemnation of Insanitary Buildings, deface, obliterate, remove, or conceal any copy of any order of condemnation which has been affixed to any building or part of building by order of the said Board; and the owner and the person having custody of any building or part of building to which a copy or copies of any such order has been affixed shall, if said copy of said order has been to his knowledge defaced, obliterated, or removed, forthwith report that fact in writing to the Board (unless he had good reason to believe that such copy of such an order has been removed by authority of the Board), and if such copy of such order has been concealed, he shall forthwith expose the same to view. (May 1, 1906, 34 Stat. 159, ch. 2073, § 12; Aug. 28, 1954, 68 Stat. 888, ch. 1032; 1973 Ed., § 5-627.)

Section references. — This section is referred to in §§ 5-716 and 5-1011.

§ 5-713. Review of order of condemnation.

Any owner of property affected by an order of condemnation issued under the authority contained in this chapter shall be entitled to a review of such order by the Condemnation Review Board established by the Mayor in accordance with the provisions of § 5-702, upon making application to said Condemnation Review Board, in writing, within 15 days from the date on which such owner has been served notice of such order of condemnation, and upon payment of a fee of \$25. The said Condemnation Review Board shall be authorized by the Mayor to affirm, modify, or vacate any order of condemnation issued under the authority contained in this chapter. (May 1, 1906, 34 Stat. 160, ch. 2073, § 13; Aug. 28, 1954, 68 Stat. 888, ch. 1032; 1973 Ed., § 5-628.)

Section references. — This section is referred to in §§ 5-707 and 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Review procedures exclusive. — These procedures, established by Congress for the review of a condemnation order made by the Board of Condemnation of Insanitary Buildings, are exclusive. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

Cited in *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

§ 5-714. Appeal from order of condemnation.

The owner of any building or part of building condemned under the provisions of this chapter may, within 15 days from the date on which the owner receives notice that an order of condemnation has been reviewed by the Condemnation Review Board ("Board") pursuant to § 5-702 and has been affirmed and modified by the Board, appeal to the District of Columbia Court of Appeals for judicial review pursuant to § 1-1510. (May 1, 1906, 34 Stat. 160, ch. 2073, § 14; Aug. 28, 1954, 68 Stat. 888, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 5-629; Oct. 5, 1985, D.C. Law 6-42, § 468, 32 DCR 4450.)

Section references. — This section is referred to in §§ 5-707 and 5-1011.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it

was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Review procedures exclusive. — These procedures, established by Congress for the review of a condemnation order made by the Board for Condemnation of Insanitary Buildings, are exclusive. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

Scope of review. — If a question is not raised in the lower court, it will not be considered on appeal. *Keyes v. Madsen*, 179 F.2d 40

(D.C. Cir. 1949), cert. denied, 339 U.S. 928, 70 S. Ct. 628, 94 L. Ed. 1349 (1950).

Failure to appeal precludes injunction action. — Where the owners of the premises fail to exercise their right to appeal a condemnation order either to the Condemnation Re-

view Board or to the Superior Court, they cannot seek a temporary restraining order in the appellate court. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

Cited in *Miller v. District of Columbia*, App. D.C., 587 A.2d 213 (1991).

§ 5-715. Neglect by tenants or occupants.

Whenever any insanitary condition which has led to the condemnation of a building or part of building has been caused in any part by the action or by the neglect of the tenant or tenants, occupant or occupants thereof, such tenant, tenants, occupant, or occupants shall be guilty of a misdemeanor and be liable to the penalties provided in § 5-716. (May 1, 1906, ch. 2073, § 15; Aug. 28, 1954, 68 Stat. 889, ch. 1032; 1973 Ed., § 5-630.)

Section references. — This section is referred to in §§ 5-716 and 5-1011.

§ 5-716. Violation of § 5-703, § 5-704, § 5-705, § 5-707, § 5-711, § 5-712, or § 5-715.

Any person violating or aiding or abetting in violating § 5-703, § 5-704, § 5-705, § 5-707, § 5-711, § 5-712, or § 5-715 shall, upon conviction thereof in the Superior Court of the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction by any person violating or aiding and abetting in violating § 5-703, § 5-704, § 5-705, § 5-707, § 5-711, § 5-712, or § 5-715, or any rules or regulations issued under the authority of these sections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (May 1, 1906, 34 Stat. 161, ch. 2073, § 16; Aug. 28, 1954, 68 Stat. 889, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 5-631; Oct. 5, 1985, D.C. Law 6-42, § 440, 32 DCR 4450.)

Section references. — This section is referred to in §§ 5-707, 5-715, and 5-1011.

Legislative history of Law 6-42. — See note to § 5-714.

Cited in *Hammond v. District of Columbia*, App. D.C., 127 A.2d 554 (1956).

§ 5-717. Appropriations authorized.

Except as herein otherwise authorized all expenses incident to the enforcement of this chapter shall be paid from appropriations made from time to time for that purpose in like manner as other appropriations for the expenses of the District of Columbia. (May 1, 1906, 34 Stat. 161, ch. 2073, § 17; Aug. 28, 1954, 68 Stat. 889, ch. 1032; 1973 Ed., § 5-632.)

Section references. — This section is referred to in § 5-1011.

§ 5-718. "Mayor" and "owner" defined; agent of owner.

(a) For the purposes of this chapter, the term "Mayor" shall mean the Mayor of the District of Columbia or his designated agent or agents; and the term "owner" shall mean:

(1) Any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of the property found by the Mayor to be in an insanitary condition;

(2) The committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or

(3) A trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

(b) Wherever under this chapter any act is to be performed by, or any notice is to be given, an owner, such act may be performed by an agent of such owner, or such notice may be given to an agent of such owner who collects rent or otherwise acts as an agent for the owner in connection with said property. (May 1, 1906, ch. 2073, § 18; Aug. 28, 1954, 68 Stat. 889, ch. 1032; 1973 Ed., § 5-633.)

Section references. — This section is referred to in § 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Notice may be served upon the rental agent for the premises, in accordance with this section and consistent with decided agency law. *Urciolo v. Washington*, App. D.C., 305 A.2d 252 (1973).

§ 5-719. Suits and proceedings under prior law; time limits.

(a) All suits and proceedings instituted by or against the Board for the Condemnation of Insanitary Buildings in the District of Columbia created by former § 5-601, or the Board for the Condemnation of Insanitary Buildings established by the Commissioners under the authority of Reorganization Plan No. 5 of 1952, prior to September 27, 1954, shall be deemed to have been taken by, or instituted by or against, the Mayor of the District of Columbia.

(b) With respect to any building or part of building condemned by either of the Boards aforesaid prior to September 27, 1954, and which building or part of building stands condemned as of September 27, 1954, the 6-month period provided by § 5-703 shall commence running from September 27, 1954.

(c) Wherever any provision of this chapter refers to any order of the Board for the Condemnation of Insanitary Buildings, such provision shall mean the

order of such Board, or, if such order be reviewed by the Condemnation Review Board, as such order has been affirmed or modified by the latter Board; and wherever this chapter establishes any time limit within which there shall be compliance with an order of the Board for the Condemnation of Insanitary Buildings, such time limit shall begin running from the date on which the owner of the property affected by said order is served with notice thereof, or, if such order be reviewed by the Condemnation Review Board, from the date on which the owner of such property receives notice that such order has been affirmed or modified by the latter Board. (May 1, 1906, ch. 2073, § 19; Aug. 28, 1954, 68 Stat. 889, ch. 1032; 1973 Ed., § 5-634.)

Section references. — This section is referred to in § 5-1011.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 8. HOUSING REDEVELOPMENT.

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| <p>Sec.
 5-801. Purpose.
 5-802. Definitions.
 5-803. District of Columbia Redevelopment Land Agency — Established; composition; appointment; Chairman; term of office; vacancies; compensation; corporate powers; procedures for disposition of claims; facilities donated as local non-cash grant-in-aid; maintenance of rental property; waiver of special assessments.
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 5-834. Relocation payments and assistance for persons displaced by District programs or by Washington Metropolitan Area Transit Authority; relocation services for persons displaced by condominium or cooperative conversion, or by rehabilitation, demolition, or discontinuance from housing use.
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 5-836. Properties near Maryland Avenue and Virginia Avenue — Transfer to Agency authorized.
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 5-838. Same — Transfer of rights-of-way by Agency to District authorized.
 5-839. Same — Transfer not a local grant-in-aid.
 5-840. Same — Definitions.</p> |
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§ 5-801. Purpose.

It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete layout, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the govern-

ment by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in §§ 5-801 to 5-820, is hereby declared to be a public use. (Aug. 2, 1946, 60 Stat. 790, ch. 736, § 2; 1973 Ed., § 5-701.)

Section references. — This section is referred to in §§ 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Purpose of Congress in enacting this chapter was to redevelop blighted areas of the District. *Hoerber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 895 (D.C. Cir. 1981).

Fifth Amendment does not prohibit legislation whose purpose is to beautify District. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Commercial properties located near an

area of blight are subject to condemnation proceedings. *Donnelly v. District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 949, 80 S. Ct. 402, 4 L. Ed. 2d 381, *rehearing denied*, 362 U.S. 914, 80 S. Ct. 660, 4 L. Ed. 2d 622 (1960).

Redevelopment Land Agency is federal agency within meaning of federal Tort Claims Act and suits based on torts allegedly committed by the Agency or its employees acting in their official capacity are maintainable, if at all, under that Act. *Goddard v. District of Columbia Redevelopment Land Agency*, 287 F.2d 343 (D.C. Cir.), *cert. denied*, 366 U.S. 910, 81 S. Ct. 1085, 6 L. Ed. 2d 235 (1961).

§ 5-802. Definitions.

The following terms, whenever used or referred to in §§ 5-801 to 5-820, shall, for the purposes of §§ 5-801 to 5-820 and unless a different intent clearly appears from the context, be construed as follows:

(1) The term "Agency" means the District of Columbia Redevelopment Land Agency established by § 5-803.

(2) "Council" means the Council of the District of Columbia.

(3) "District Mayor" means the Mayor of the District of Columbia.

(4) "Housing" includes housing, dwelling, habitation, and residence.

(5) "Housing project" means any low-rent housing (as defined in the United States Housing Act of 1937, U.S.C., Title 42, ch. 8), the development or administration of which is assisted by the Department of Housing and Urban Development.

(6) "Land" includes bare or vacant land, or the land under buildings, structures, or other improvements; also water and land under water. When employed in connection with "use," as for instance, "use of land" or "land use," "land" also includes buildings, structures, and improvements existing or to be placed thereon.

(7) "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than \$13 per room per month, excluding utilities.

(8) "Lessee" means an individual, partnership, corporation, religious organization, institution, or any other legal entity including, but not limited to, a redevelopment company, which has the power to conform to the applicable provisions of this chapter and to comply with the terms of the lease of a project area or part thereof, and includes the successors or assigns and successors in title of any lessee.

(9) "Offering document" means a prospectus, request for proposals or bids, or any other notification to solicit offers for the lease or sale of urban renewal properties.

(10) "Planning Commission" means the National Capital Planning Commission.

(11) "Proceeds" means the money proceeds of sales or transfers by the Agency; and "net proceeds" means the gross proceeds after deducting commissions or other expenses of the sales or transfers.

(12) "Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Mayor as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of §§ 5-801 to 5-820 relating to lease or sale by the Agency, for abbreviation "project area" is used for the remainder of the project area after taking out those pieces of property which in accordance with § 5-806(a) shall have been or are to be transferred for public uses.

(13) "Public low-rent housing" means low-rent housing, constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water, and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does not exceed the maximum net family income falling within the lowest 20% by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Mayor. At the end of 1 year after the enactment of §§ 5-801 to 5-820 this definition shall be reexamined by the Mayor for the District of Columbia, and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing, the Mayor shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

(14) "Purchaser" means an individual, partnership, corporation, religious organization, institution, or any other legal entity including, but not limited to, a redevelopment company, which has the power to conform to the applicable provisions of this chapter and to comply with the terms of the sale of a project area or part thereof and includes the successors or assigns and successors in title of any purchaser.

(15) "Real property" includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

(16) "Redevelopment" means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of §§ 5-801 to 5-820, "redevelopment" also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street layout, lot layout, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

(17) "Redevelopment company" means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any state, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or purchaser of a project area and to conform to the provisions of §§ 5-801 to 5-820 and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

(18) "Rentals" means the rents specified in a lease to be paid by the lessee to the Agency; "net rentals" means gross rentals after deducting taxes payable by the Agency.

(19) "Revenues" means the revenues or income received by the Agency from real property while held by it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and "net revenues" means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

(20) "Substandard housing conditions" means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Mayor detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia.

(21) "Unsolicited offer" means a plan, proposal, or offer for the development of urban renewal property submitted to the Agency independent of an offering document. (Aug. 2, 1946, 60 Stat. 791, ch. 736, § 3; Aug. 28, 1958, 72 Stat. 1102, Pub. L. 85-854, § 1(1-3); 1973 Ed., § 5-702; Aug. 17, 1982, D.C. Law 4-140, § 2(a), 29 DCR 2862.)

Section references. — This section is referred to in §§ 5-801, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-829, 5-832, 5-837, 5-840, and 7-133.

Legislative history of Law 4-140. — Law 4-140, the "Redevelopment Land Agency Disposition Review Act of 1982," was introduced in Council and assigned Bill No. 4-319, which was referred to the Committee on Housing and Economic Affairs. The Bill was adopted on first and second readings on April 6, 1982, and May 11, 1982, respectively. Disapproved by the Mayor on June 4, 1982, it was assigned Act No. 4-206 and transmitted to both Houses of Congress for its review.

References in text. — The Department of Housing and Urban Development has been substituted for "United States Housing Authority" in paragraph (6). The United States Housing Act of 1937 referred to in the text, is Act Sept. 1, 1937, c. 896, was revised generally by Pub. L. 93-383, Title II, § 201(a), Aug. 22, 1974, 88 Stat. 653 which is classified generally as 42 U.S.C. § 1437 et seq. The "time of the enactment of this law," referred to in paragraph (7), is prescribed by § 22 of the Act of August 2, 1946, 60 Stat. 791, ch. 736.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in paragraph (10) of this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

"Slum" defined. — The word "slum," within the meaning of this chapter, means conditions injurious to the public health, safety, morals, and welfare. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Urban renewal allowed on area basis. — Urban renewal may be brought about on an

area, rather than on a structure-by-structure, basis, thus permitting the acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Aid of private enterprise allowed. — Where the redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, the aid of private enterprise may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

§ 5-803. District of Columbia Redevelopment Land Agency
— Established; composition; appointment; Chairman; term of office; vacancies; compensation; corporate powers; procedures for disposition of claims; facilities donated as local non-cash grant-in-aid; maintenance of rental property; waiver of special assessments.

(a) The District of Columbia Redevelopment Land Agency is hereby established as an instrumentality of the District of Columbia government, and shall be composed of 5 members appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the "Council"). The Mayor shall name 1 member as Chairman. No more than 2 members may be officers of the District of Columbia government. Each member shall serve for a term of 5 years except that of the members first appointed under this section, 1 shall serve for a term of 1 year, 1 shall serve for a term of 2 years, 1 shall serve for a term of 3 years, 1 shall serve for a term of 4 years, and 1 shall serve for a term of 5 years, as designated by the Mayor. The terms of the members first appointed under this section shall begin on or after January 2, 1975. Should any member who is an officer of the District of Columbia government cease to be such an officer, then his term as a member shall end on the day he ceases to be such an officer. Any person appointed to fill a vacancy in the Agency shall be appointed to serve for the remainder of the term during which such vacancy arose. The Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid in accordance with § 1-612.8.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the Board of Directors thereof, consisting of the 5 members thereof appointed as above set forth, except that nothing in this section shall prohibit the District of Columbia government from dissolving the corporation, eliminating the Board of Directors, or taking such other action with respect to the powers and duties of such Agency, including those actions specified in subsection (c) of this section, as is deemed necessary and appropriate. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, state, federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, pre-

scribe, amend, repeal, and enforce bylaws, rules, and regulations for the exercise of its powers under §§ 5-801 to 5-820 or governing the manner in which its business may be conducted and the powers granted to it by §§ 5-801 to 5-820 may be exercised and enjoyed, including the selection of officers other than its Chairman, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by §§ 5-801 to 5-820, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under §§ 5-801 to 5-820.

(c) The Council is authorized, by act, to adopt legislation:

(1) Establishing, for the purpose of assuring uniform procedures relating to the disposition of complaints and other claims involving the Redevelopment Land Agency (or its successor) and other administrative units of the District of Columbia government, a factfinding board to receive, hear, and act on such complaints and claims arising out of or in connection with administrative and other actions of such Agency or units in carrying out their powers and functions;

(2) Providing that all planning, designing, construction, and supervision of public facilities which are to be contributed to any redevelopment area as the local non-cash grant-in-aid to the project under Title I of the Housing Act of 1949, shall, to the extent practicable, be carried out by an appropriate District of Columbia department or agency on the basis of a contractual or other arrangement with the Redevelopment Land Agency or its successor;

(3) Providing that any occupied rental property owned by the Agency shall be maintained by such Agency (or its successor) in a safe and sanitary condition; or

(4) Providing that the Mayor shall have authority to waive all or any part of any special assessments levied against abutting property owners for the cost of sewers, streets, curbs, gutters, sidewalks, utilities, and other supporting facilities or project improvements where the costs therefor to the District of Columbia can be applied as a noncash local grant-in-aid, as defined by the Secretary of the Department of Housing and Urban Development. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4; 1973 Ed., § 5-703; Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title II, § 201(a)-(c); May 10, 1989, D.C. Law 7-231, § 18, 36 DCR 492.) 778

Section references. — This section is referred to in §§ 1-1462, 5-801, 5-802, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-822, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it

was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

References in text. — Title I of the Housing Act of 1949, referred to in paragraph (2) of subsection (c) of this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

Compensation for board members of Agency. — Section 120(c) of Pub. L. 103-127, 107 Stat. 1346, the District of Columbia Appropriations Act, 1994, provided that notwithstanding subsection (a) of this section, the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid,

during any fiscal year, a per diem compensation at a rate established by the Mayor.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Definitions applicable. — The definitions in § 1-202 apply to this section.

Congress has power to delegate to the District the power to clear slums. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Agency empowered to take title to any necessary realty. — The Agency has the right and the power to take full title to any realty it considers necessary to carry out a project and it is not within the province of the courts to make such a determination. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Aid of private enterprise allowed. — Where the redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, the aid of private en-

terprise may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Status of Agency under Uniform Relocation Assistance Act. — For purposes of the Uniform Relocation Assistance Act, the Agency is a "state agency" rather than a "federal agency." *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

Federal court may grant preliminary relief against the Agency with respect to the displacement of any resident of an area undergoing redevelopment. *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

Scope of judicial review. — The wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond the scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Court cannot substitute its judgment for that of the Agency as to whether the properties sought to be seized are slum properties. *District of Columbia Redevelopment Land Agency v. 70 Parcels of Land*, 153 F. Supp. 840 (D.D.C. 1954).

Function of the courts is limited to determining whether the administrators of this chapter are acting within reason and within their congressional delegation of authority. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Cited in *Braxton v. National Capital Hous. Auth.*, App. D.C., 396 A.2d 215 (1978); *Hinton v. Metropolitan Police Dep't*, 726 F. Supp. 875 (D.D.C. 1989).

§ 5-804. Same — Power to acquire and assemble real property; condemnation; utility facilities.

(a) Subject to and in accordance with the procedures, conditions, and other provisions of §§ 5-801 to 5-820, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in § 5-806(i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with subchapter II of Chapter 13 of Title 16. The title to properties acquired under §§ 5-801 to 5-820 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency.

(c) Notwithstanding any provisions of law to the contrary, whenever, as the result of urban redevelopment, any utility facilities are required to be relocated, adjusted, replaced, removed, or abandoned in order to meet the requirements of or to conform to a redevelopment plan, or any modification of such plan adopted pursuant to §§ 5-801 to 5-820, the utility owning such facilities, shall relocate, adjust, replace, remove, or abandon the same, as the case may be. The cost of relocation, adjustment, replacement, or removal, and the cost of abandonment of such facilities shall be paid to the utility by the Agency as part of the cost of the redevelopment project.

(d) As used in this section:

(1) The term "utility" means any gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company, whether publicly or privately owned, as those terms are defined in §§ 43-212 to 43-221.

(2) The term "utility facility" means all real and personal property, buildings, and equipment owned or held by a utility in connection with the conduct of its lawful business.

(3) The term "cost of relocation, adjustment, replacement, or removal" means the entire amount paid by such utility properly attributable to such relocation, adjustment, replacement, or removal, as the case may be, less any increase in value on account of any betterment of the new utility facilities over the old utility facilities, and less any salvage value derived from the old utility facilities.

(4) The term "cost of abandonment" means the actual cost to abandon any utility facilities which are not to be used, relocated, adjusted, replaced, removed, or salvaged, together with the original cost of such abandoned facilities, less depreciation. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5; July 29, 1970, 84 Stat. 587, Pub. L. 91-358, title I, § 166(b); Oct. 14, 1972, 86 Stat. 812, Pub. L. 92-495, § 2; 1973 Ed., § 5-704; Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 201(d).)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Transfer of United States property. — Act of September 26, 1978, 92 Stat. 749, Pub. L. 95-385, provides for the transfer of certain United States property to the District of Columbia Redevelopment Land Agency.

Editor's notes. — The reference to "§ 5-806(i)," made in subsection (a), should probably be to § 5-806(h).

Police power of Agency. — The power of

the Agency to clear slums lies within the well-established concepts of the police power, which purpose is the protection of the public health, safety, morals, and welfare. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

The condemnation of improvements which create hazards to health and safety is within the power of the Agency. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

The Agency may seize title to realty on which slums exist, or on which a slum may be foreseen, for the purpose of eliminating or preventing conditions injurious to the public health, safety, morals, or welfare. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

The Agency has the power to acquire by eminent domain, realty to be devoted to streets, schools, recreation centers, parks, low-cost housing, and other public uses. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Restriction on police power. — The Agency does not have the power to seize realty beyond what is reasonably necessary for slum clearance and prevention. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Urban renewal on area basis allowed. — Urban renewal may be brought about on an area, rather than on a structure-by-structure, basis, thus permitting the acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Blighted areas may be eliminated. — The standards contained in this chapter are sufficiently definite and adequate to sustain the delegation of authority, to the agencies concerned, for the execution of a plan to eliminate not only slums, but also blighted areas which tend to produce slums. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Chapter applies to commercial properties. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Commercial properties located near an area of blight are subject to condemnation proceedings. *Donnelly v. District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (D.C. Cir. 1959), cert. denied, 361 U.S. 949, 80 S. Ct. 402, 4 L. Ed. 2d 381, rehearing denied, 362 U.S. 914, 80 S. Ct. 660, 4 L. Ed. 2d 622 (1960).

Aid of private enterprise allowed. — Where the redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, the aid of private enterprise may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Agency is a "federal agency" within meaning of the federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in their official capacity are maintainable, if at all, un-

der that *Act. Goddard v. District of Columbia Redevelopment Land Agency*, 287 F.2d 343 (D.C. Cir.), cert. denied, 366 U.S. 910, 81 S. Ct. 1085, 6 L. Ed. 2d 235 (1961).

National Environmental Policy Act requires consideration of environmental impacts at every important stage in the decisionmaking process of an urban renewal project. *Businessmen Affected Severely by Yearly Action Plans, Inc. v. D.C. City Council*, 339 F. Supp. 793 (D.D.C. 1972).

District Housing Code is not directly applicable to temporary residential properties maintained by the Agency. *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

Property owners entitled to just compensation. — Property owners who were defendants in condemnation proceedings instituted pursuant to this chapter are entitled to just compensation for the taking, as required by the 5th Amendment. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Evidence allowed as to value of land. — A landowner may introduce evidence to demonstrate the comparability of 2 similar business operations located on 2 incomparable pieces of property. *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337 (D.C. Cir. 1976).

Government priority over proceeds of condemnation. — Where private and public claims compete for the proceeds from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land*, 589 F.2d 628 (D.C. Cir. 1978).

Court may grant a preliminary injunction where the plaintiffs would suffer irreparable injury, for which there is no adequate remedy at law, from any further progress of an urban renewal project. *Businessmen Affected Severely by Yearly Action Plans, Inc. v. D.C. City Council*, 339 F. Supp. 793 (D.D.C. 1972).

Conditions leading to denial of preliminary injunction. — The court may refuse to grant a preliminary injunction against the Agency where there is possible harm to the public interest and a likelihood of success on the merits of the suit. *Businessmen Affected by Second Year Action Plan v. District of Columbia Redevelopment Land Agency*, 442 F.2d 883 (D.C. Cir. 1971).

Scope of judicial review. — The wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond the scope of judicial review. *District of Columbia Redevelopment*

Land Agency v. 40 Parcels of Land, 171 F. Supp. 138 (D.D.C. 1959).

The court will not pass upon the issue of whether a particular housing project is or is not desirable. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Cited in *Mamer v. District of Columbia Redevelopment Land Agency*, 284 F.2d 221 (D.C. Cir. 1960); *Brabner-Smith v. District of Columbia Redevelopment Land Agency*, 284 F.2d 229 (D.C. Cir. 1960).

§ 5-805. Comprehensive plan; project area redevelopment plans; Shaw Junior High School.

(a) The project area redevelopment plans adopted by the National Capital Planning Commission and approved by the Council of the District of Columbia in accordance with subsection (b) of this section shall not be inconsistent with the Comprehensive Plan for the National Capital adopted under §§ 1-2002(a) and 1-244.

(b) For the exercise of the powers granted to the Agency by §§ 5-801 to 5-820 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the Council of the District of Columbia, and approval thereof by said Council; and

(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Council, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Council, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in §§ 5-801 to 5-820 for the acquisition and assembly of the real property of the area. Follow-

ing such certification, no new construction shall be authorized by the District Mayor in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

(e) Prior to the adoption of an urban renewal plan by the Planning Commission and approval by the District Council, the Agency may exercise the powers granted to it by §§ 5-801 to 5-820, for the acquisition and disposition of real property, the demolition and removal of buildings or structures, the relocation of site occupants, and the construction of site improvements for the purpose of providing a site for a new facility to replace Shaw Junior High School within the boundaries which may be established for any urban renewal project area; provided, that: (1) The District Council, after a public hearing, and the Planning Commission approve the acquisition and disposition of all such property or properties; and (2) the District Mayor agrees to assume the responsibility to bear any loss that may arise as a result of the exercise of authority under this subsection in the event that the property is not used for urban renewal purposes because the urban renewal plan is not approved by all appropriate authorities or because such urban renewal plan, as approved by all appropriate authorities does not include such property or properties or is amended to omit any of the acquired property, or is abandoned for any reason. The District Mayor and the appropriate agencies operating within the District of Columbia are authorized to do any and all things necessary to secure financial assistance under Title I of the Housing Act of 1949, as amended, to acquire and prepare a site for a new facility to replace Shaw Junior High School. The District Mayor is authorized to assume the responsibilities described in this subsection and, to carry out the purposes of this subsection, the District Mayor and the Agency are authorized to borrow money pursuant to the early land acquisition provisions of Title I of the Housing Act of 1949, as amended, and to issue obligations evidencing such loans and to make such pledges as may be required to secure such loans. (Aug. 2, 1946, 60 Stat. 794, ch. 736, § 6; Sept. 12, 1966, 80 Stat. 758, Pub. L. 89-569, § 1; 1973 Ed., § 5-705; Apr. 10, 1984, D.C. Law 5-76, § 5, 31 DCR 1049.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 5-76. — Law 5-76, the "D.C. Comprehensive Plan Act of 1984," was introduced in Council and assigned Bill No. 5-282, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on January 17, 1984, and January 31, 1984, respectively. Signed by the Mayor on February 23, 1984, it was assigned Act No. 5-112 and transmitted to both Houses of Congress for its review.

References in text. — Title I of the Housing Act of 1949, as amended, referred to in subsec-

tion (e) of this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

District of Columbia Comprehensive Plan of 1984. — Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled "The District of Columbia Comprehensive Plan of 1984," and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that "the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital."

Section 2 of D.C. Law 5-187 added a new title

XI to the District of Columbia Comprehensive Plan of 1984 adopted by D.C. Law 5-76. D.C. Law 5-187 was reprinted in its entirety in 32 DCR 873. On March 7, 1985, the National Capital Planning Commission adopted a resolution finding that "the District elements adopted and amended by the Council by Act 5-252 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital."

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, approved. — Pursuant to Resolution 7-226, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988", effective March 15, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on November 5, 1987.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved. — Pursuant to Resolution 7-273, the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988," effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, Ward 2, as adopted by the National Capital Planning Commission on January 7, 1988.

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, approved. — Pursuant to Resolution 7-274, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988; effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on January 7, 1988.

Modification of Urban Renewal Plan for 14th Street Urban Renewal Area approved. — Pursuant to Resolution 7-353, the "Urban Renewal Plan for the 14th Street Urban Renewal Area, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the 14th Street Urban Renewal Area, as adopted by the National Capital Planning Commission on April 4, 1985.

Modification of Urban Renewal Plan for Downtown Urban Renewal Area approved. — Pursuant to Resolution 7-354, the "Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1988", effective November

29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Downtown Renewal Area, as adopted by the National Capital Planning Commission on October 1, 1986.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved. — Pursuant to Resolution 7-364 the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, as adopted by the National Capital Planning Commission on November 4, 1987.

Modification of Urban Renewal Plan for Northeast Urban Area, Project No. 1, located in Ward 2, approved. — Pursuant to Resolution 8-100, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1989", effective October 10, 1989, the Council approved modifications to the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1992. — Pursuant to Resolution 9-184, effective February 14, 1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, Second Modification Approval Resolution of 1992. — Pursuant to Resolution 9-321, effective July 24, 1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the 14th Street Urban Renewal Area ("Project Area"), First Modification Approval Resolution of 1993. — Pursuant to Resolution 10-209, effective December 17, 1993, the Council approved modifications to the Urban Renewal Plan for the 14th Street Urban Renewal Area, located in Ward 1 as adopted by the National Capital Planning Commission.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section

402(122) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Urban renewal on area basis allowed. — Urban renewal may be brought about on an area, rather than on a structure-by-structure basis, thus permitting the acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Congress has the power, in enacting housing legislation applicable to the District, to provide that a whole area should be redesigned. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Diversification for future use relevant to maintenance of housing standards. — Diversification in the future use of an entire area to provide new homes, schools, churches, parks, streets, and shopping centers is relevant to the maintenance of desired housing standards. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Property subject to seizure. — Property which, standing by itself, is innocuous and unoffending may be taken for redevelopment. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Realty may not be seized, redeveloped, and sold merely because it is included in an area which contains a slum. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

The title to realty cannot be seized by the government merely because a slum presently exists on the realty; some further necessitous circumstance must exist to validate such a seizure. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Realty may not be seized if no slum exists in the area and the seizure is not for public use.

Schneider v. District of Columbia, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Aid of private enterprise allowed. — Where the redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, the aid of private enterprise may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Necessity for public hearing antecedent to urban renewal designation. — The question of the necessity for a public hearing antecedent to the designation of an urban renewal project area becomes moot when the designation is rescinded. *Gudelsky v. Spencer*, 242 F.2d 29 (D.C. Cir. 1957).

National Environmental Protection Act applies to approval process for a neighborhood development program. *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

Use of plan by HUD. — Review of and partial reliance on Redevelopment Land Agency's urban renewal plan by the federal Department of Housing and Urban Development was not an abdication by HUD of its decisionmaking duty. *Stanback v. Harris*, 444 F. Supp. 1143 (D.D.C. 1978).

Conditions leading to denial of injunction. — The court may refuse to grant a preliminary injunction against the Agency where there is possible harm to the public interest and a likelihood of success on the merits of the suit. *Businessmen Affected by Second Year Action Plan v. District of Columbia Redevelopment Land Agency*, 442 F.2d 883 (D.C. Cir. 1971).

Scope of judicial review. — The wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond the scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

The appellate court will not disturb an order of the lower court which denies and dissolves a preliminary injunction with respect to an urban renewal plan except for an abuse of discretion or a clear error. *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

Cited in *Hoeber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), aff'd, 672 F.2d 894, 672 F.2d 895 (D.C. Cir. 1981).

§ 5-806. Transfer, lease, or sale of real property for public and private uses.

(a) After any real property in the project area shall have been acquired by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of federal or District agencies, such as streets and other utilities and works, federal and District public buildings, public recreational spaces, and schools. The federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Judge of the Superior Court of the District of Columbia.

(b) The Agency, after it has acquired any or all of the real property in the project area, shall have the power to lease or sell so much thereof as is not to be devoted to public use, as an entirety or parts thereof separately to lessees or purchasers. Said real property may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned properties; and the federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

(c)(1) Prior to the issuance of an offering document pertaining to the disposition of urban renewal properties, the Agency shall submit a draft offering document to the Council for a 30-day period of review excluding days of Council recess. No such offering document may be issued until the end of the 30-day period of review beginning the day the offering document is transmitted by the Agency and received by the Chairman of the Council; and then only if during such period the Council does not adopt a resolution disapproving such offering document. Nothing in this chapter shall prevent the Council from approving the offering document by resolution prior to the end of the review period.

(2) Unsolicited offers which are received and recommended for negotiation by the Agency shall be submitted to the Council for a 30-day period of review and comment. The 30-day period for Council review shall not include Saturdays, Sundays, legal holidays, and days that pass during a recess of the Council.

(3) At least 15 days prior to the execution of the lease or sale agreement, and after 15 days public notice, the Agency shall hold a public hearing on the terms and conditions of the lease or sale including, but not limited to, the total

price, length and terms of the lease agreement, or price, conditions, and terms of the sale.

(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease and every contract of sale and deed shall provide that the lessee or purchaser shall: (1) Devote the real property to the uses specified in the approved project area redevelopment plan or approved modifications thereof; (2) begin within a reasonable time any improvements on the real property required by the plan; and (3) comply with such other conditions as the Agency may find necessary to carry out the purposes of §§ 5-801 to 5-820; provided, that clause (2) of this sentence shall not apply to a mortgagee or trustee under deed of trust or others who acquire an interest in such real property as the result of the enforcement of any lien or claim thereon. In the instrument, or instruments, of lease or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reasonably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey (except to a mortgagee or trustee under a deed of trust) the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any responsible private sources (eligible as purchasers or lessees under §§ 5-801 to

5-820) within a reasonable announced period of time (not less than 30 days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private lessee or purchaser shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

(g) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser; provided, that any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

(h) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it, in addition to the costs provided for in § 5-804(c), the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may arrange with the appropriate federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

(i) In the lease or sale of a project area or part thereof which is designated for commercial or industrial use under the project area redevelopment plan, the Agency shall establish a policy which in its judgment will provide, to business concerns which are displaced from a project area, a priority of opportunity to relocate in commercial or industrial facilities provided in connection with such development. (Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85-854, § 1(4-11); July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(19); Oct. 14, 1972, 86 Stat. 812, Pub. L. 92-495, § 3; 1973 Ed., § 5-706; Aug. 17, 1982, D.C. Law 4-140, § 2(b), 29 DCR 2862; Aug. 1, 1985, D.C. Law 6-15, § 4, 32 DCR 3570.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-807, 5-810, 5-812, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 4-140. — See note to § 5-802.

Legislative history of Law 6-15. — Law 6-15, the "Legislative Veto Amendments Act of 1985," was introduced in Council and assigned

Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985, and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was Act. No. 6-30 and transmitted to both Houses of Congress for its review.

Offering document. — Pursuant to Resolution 5-765, the "Offering Document to Receive Proposals to Develop Parcels 7, 18, 19, 21, and

22 in the H Street Urban Renewal Area Approval Resolution of 1984," effective June 26, 1984, the Council approved the issuance of an offering document to develop Parcels 7, 18, 19, 21, and 22 in the H Street Urban Renewal Area.

Pursuant to Resolution 7-308, the "Public Offering Document to Receive Proposals to Develop Parcel 1 in the Downtown Urban Renewal Area Disapproval Resolution of 1988", effective July 12, 1988, the Council disapproved the issuance of an offering document to develop Parcel 1 in the Downtown Urban Renewal Area.

Review of unsolicited offer to develop parcel in Southwest Urban Renewal Area, Project C. — Pursuant to Resolution 5-891, the "Unsolicited Offer to Develop Parcel 57-2 in the Southwest Urban Renewal Area, Project C Review Resolution of 1984," effective October 23, 1984, the Council reviewed and commented on the unsolicited offer to develop Parcel 57-2 in the Southwest Urban Renewal Area, Project C, pursuant to § 7(e)(2) of the District of Columbia Redevelopment Act of 1945, effective August 17, 1982 (D.C. Law 4-140; D.C. Code, § 5-806(c)(2)).

Unsolicited Proposal to Acquire and Develop Parcels 12, 13, 23-A and 34 in the 14th Street Urban Renewal Area Emergency Approval Resolution of 1992. — Pursuant to Resolution 9-289, effective July 7, 1992, the Council approved, on an emergency basis, acceptance of an unsolicited proposal to acquire and develop parcels 12, 13, 23-A and 34 in the 14th Street Urban Renewal Area.

Realty taken for public purpose within power of eminent domain. — The taking of title to realty for the public purpose of eliminating or preventing slums is within the power of eminent domain. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Urban renewal on area basis allowed. — Urban renewal may be brought about on an area, rather than on a structure-by-structure, basis, thus permitting the acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Commercial properties located near an area of blight are subject to condemnation proceedings. *Donnelly v. District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (D.C. Cir. 1959), cert. denied, 361 U.S. 949, 80 S. Ct. 402, 4 L. Ed. 2d 381, rehearing denied, 362 U.S. 914, 80 S. Ct. 660, 4 L. Ed. 2d 622 (1960).

Chapter is not unconstitutional, though it authorizes condemnation of commercial struc-

tures and the use of private enterprise for redevelopment. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Subsequent use does not vitiate seizure. — If realty is seized for the purpose of eliminating or preventing slums, the fact that it may be sold subsequently to private persons does not vitiate the validity of the seizure. *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953), modified sub nom. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Aid of private enterprise allowed. — Where the redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, the aid of private enterprise may be sought. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Standing of adjoining property owners to sue. — Where the use restrictions in an urban renewal plan are specifically stated to be covenants running with the land in favor of the owners of adjoining property, these owners have standing to sue as to what uses are permitted. *L'Enfant Plaza N., Inc. v. District of Columbia Redevelopment Land Agency*, 300 F. Supp. 426 (D.D.C. 1969), aff'd in part, rev'd in part, 437 F.2d 698 (D.C. Cir. 1970).

Relevant evidence in determining meaning of plan. — Evidence of the legislative history of an urban renewal plan and of the proceedings of the Planning Commission is highly relevant in determining the meaning of a phrase used in the plan. *L'Enfant Plaza N., Inc. v. District of Columbia Redevelopment Land Agency*, 437 F.2d 698 (D.C. Cir. 1970).

Interpretation of phrase "accessory uses". — An interpretation of the phrase "accessory uses" as permitting uses other than those named in the plan, but which are necessary to serve the primary uses, is not unreasonable or erroneous and will not be upset. *L'Enfant Plaza N., Inc. v. District of Columbia Redevelopment Land Agency*, 300 F. Supp. 426 (D.D.C. 1969), aff'd in part, rev'd in part, 437 F.2d 698 (D.C. Cir. 1970).

Within the meaning of an urban renewal plan which allows for an office building and "accessory uses" in a particular location, "accessory uses" are limited to restaurants, dining rooms, cafeterias, snack bars, carryouts, food cart services, food and beverage vending machine facilities, small stands, and off-street parking, where all such uses are solely for the employees occupying the building and their visitors. *L'Enfant Plaza N., Inc. v. District of Columbia Redevelopment Land Agency*, 345 F. Supp. 508 (D.D.C. 1972), aff'd, 486 F.2d 1314 (D.C. Cir. 1973).

District Housing Code is not directly applicable to temporary residential properties maintained by the Agency. *Jones v. Dis-*

trict of Columbia Redevelopment Land Agency, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

All administrative remedies must be exhausted before there exists an actual controversy over the meaning of a plan which can be decided by the courts. *L'Enfant Plaza N., Inc. v. District of Columbia Redevelopment Land Agency*, 300 F. Supp. 426 (D.D.C. 1969), aff'd in part, rev'd in part, 437 F.2d 698 (D.C. Cir. 1970).

Scope of judicial review. — The wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond the scope of judicial review. *District of Columbia Redevelopment Land Agency v. 40 Parcels of Land*, 171 F. Supp. 138 (D.D.C. 1959).

Cited in *Hoeber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), aff'd, 672 F.2d 894, 672 F.2d 895 (D.C. Cir. 1981); *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992).

§ 5-807. Housing for displaced families.

(a) Prior to approval by the District Mayor, pursuant to paragraph (2) of § 5-805(b), of any redevelopment plan, the District Mayor shall satisfy himself (and shall so state at the public hearing required by such paragraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

(b) Families displaced by slum clearance or redevelopment under §§ 5-801 to 5-820 shall be given preference as tenants to fill vacancies occurring in housing owned or operated within the District of Columbia by federal or District of Columbia governmental agencies until appropriate housing is available to such families. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 8; 1973 Ed., § 5-707.)

Cross references. — As to relocation payments and assistance for persons displaced by District programs or by Washington Metropolitan Area Transit Authority, see § 5-834.

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-830, 5-831, 5-832, 5-837, and 7-133.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-808. Acquisition of property from prospective lessee or purchaser.

As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 9; 1973 Ed., § 5-708.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

§ 5-809. Use-value appraisals.

(a) Before leasing or selling any piece or tract of land in the project area which is to be used for private uses or for low-rent housing, the Agency shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon such piece or tract of land, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by 2 or more land-value experts employed by it for the purpose; but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

(b) The aggregate use-values placed by the Agency upon pieces or tracts of land within a particular project area leased or sold by the Agency for private uses and for low-rent housing, shall not be less than one third of the aggregate cost to the Agency of acquiring such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof).

(c) All appraisals for the sale or lease of property shall be released to the public following the execution of the lease or sale agreement. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85-854, § 1(12); 1973 Ed., § 5-709; Aug. 17, 1982, D.C. Law 4-140, § 2(c), 29 DCR 2862; Sept. 17, 1982, D.C. Law 4-150, § 402, 29 DCR 3377.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 4-140. — See note to § 5-802.

Legislative history of Law 4-150. — Law 4-150, the "International Banking Facilities Tax, District of Columbia Redevelopment Act of 1945 Amendment, and Cable Television Communications Act of 1981 Technical Clarification Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-360,

which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 22, 1982 and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-221 and transmitted to both Houses of Congress for its review.

Mayor authorized to issue regulations. — Section 401 of D.C. Law 4-150 provided that the Mayor shall issue regulations necessary to carry out the provisions of the act.

§ 5-810. Redevelopment companies.

(a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficiaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of § 5-811; and no action of stockholders, officers, directors, bondholders, creditors, partners or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation of any redevelopment company, partnership, or individual in any litigation or proceeding in any federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

(b) Redevelopment corporations may be organized under the provisions of Chapter 2 of Title 29; and said corporations shall have the power to be redevelopment companies under §§ 5-801 to 5-820 and to acquire and hold real property for the purposes set forth in §§ 5-801 to 5-820 and to exercise all other powers granted to redevelopment companies in §§ 5-801 to 5-820 subject to the provisions, limitations, and obligations set forth in §§ 5-801 to 5-820.

(c) The Agency may require that any lessee or purchaser to which any project area or part thereof is leased or sold under §§ 5-801 to 5-820 shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and the Agency may, in its discretion, require, for such period as it may specify, that no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the lessee or purchaser incurred for or in relation to any property or enterprise outside of said area. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 11; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85-854, § 1(13); 1973 Ed., § 5-710.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-813, 5-815, 5-816, 5-817,

5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Cited in *Hoeber v. District of Columbia Re-*

development Land Agency, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 672 F.2d 895 (D.C. Cir. 1981).

§ 5-811. Modification of redevelopment plans.

An approved project area redevelopment plan may be modified at any time or times; provided, that any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof; provided further, that such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the Council of the District of Columbia, as hereinafter provided. Before approval, the District Council shall hold a public hearing on the proposed modification after 10 days public notice. The District Council may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with its recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Council, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85-854, § 1(14); 1973 Ed., § 5-711.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Modifications of Urban Renewal Plan for Shaw School Urban Renewal Area approved. — Pursuant to Resolution 5-197, the "Urban Renewal Plan for the Shaw School Urban Renewal Area Modification Approval Resolution of 1983," effective June 7, 1983, the Council approved the proposed modifications of the Shaw Plan as adopted by the National Capital Planning Commission on August 5, 1982.

Modifications of Urban Renewal Plan for Downtown Urban Renewal Area approved. — Pursuant to Resolution 5-255, the "Urban Renewal Plan for the Downtown Urban Renewal Area Modification Approval Resolution of 1983," effective July 5, 1983, the Council approved the proposed modifications of the Urban Renewal Plan as adopted by the National Capital Planning Commission on May 5, 1983.

Modifications of Urban Renewal Plan for 14th Street Urban Renewal Area approved. — Pursuant to Resolution 5-256, the "Urban Renewal Plan for the 14th Street Urban Renewal Area Modification Approval Resolution of 1983," effective July 5, 1983, the Council approved the proposed modifications of the Urban Renewal Plan as adopted by the Na-

tional Capital Planning Commission on July 1, 1982.

Modifications of Urban Renewal Plan for Northeast Urban Renewal Area, Project No. 1 approved. — Pursuant to Resolution 5-257, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, Modification Approval Resolution of 1983," effective July 5, 1983, the Council approved the proposed modifications of the Urban Renewal Plan as adopted by the National Capital Planning Commission on May 6, 1982.

Modifications of Urban Renewal Plan for H Street Urban Renewal Area approved. — Pursuant to Resolution 5-570, the "Urban Renewal Plan for the H Street Urban Renewal Area Modification Approval Resolution of 1984," effective February 28, 1984, the Council approved the proposed modifications of the H Street Plan as adopted by the National Capital Planning Commission on August 4, 1983.

Pursuant to Resolution 6-320, the "Urban Renewal Plan for the H Street Urban Renewal Area First Modification Approval Resolution of 1985," effective October 8, 1985, the Council approved the proposed modifications of the Urban Renewal Plan for the H Street Urban Renewal Area as adopted by the National Capital Planning Commission on May 2, 1985.

Modifications to Urban Renewal Plan for Shaw School Urban Renewal Area approved. — Pursuant to Resolution 6-327, the

"Urban Renewal Plan for the Shaw School Urban Renewal Area First Modification Approval Resolution of 1985," effective October 8, 1985, the Council approved the proposed modifications of the Urban Renewal Plan for the Shaw School Urban Renewal Area as adopted by the National Capital Planning Commission on May 30, 1985.

Modification of Urban Renewal Plan for Fort Lincoln Urban Renewal Area approved. — Pursuant to Resolution 6-418, the "Urban Renewal Plan for the Fort Lincoln Urban Renewal Area Second Modification Approval Resolution of 1985," effective November 5, 1985, the Council approved the proposed modifications of the Urban Renewal Plan for the Fort Lincoln Urban Renewal Area, located in Ward 5, as adopted by the National Capital Planning Commission on January 10, 1985.

Modifications of Urban Renewal Plan for Southwest Urban Renewal Area approved. — Pursuant to Resolution 6-680, the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C-1, First Modifications Approval Resolution of 1986," effective May 27, 1986, the Council approved the modifications to the Urban Renewal Plan as adopted by the National Capital Planning Commission on February 6, 1986.

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1 approved. — Pursuant to Resolution 7-226, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988", effective March 15, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on November 5, 1987.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved. — Pursuant to Resolution 7-273 the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988", effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, Ward 2, as adopted by the National Capital Planning Commission on January 7, 1988.

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, approved. — Pursuant to Resolution 7-274, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988", effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the

National Capital Planning Commission on January 7, 1988.

Modification of Urban Renewal Plan for 14th Street Urban Renewal Area approved. — Pursuant to Resolution 7-353, the "Urban Renewal Plan for the 14th Street Urban Renewal Area, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the 14th Street Urban Renewal Area, as adopted by the National Capital Planning Commission on April 4, 1985.

Modification of Urban Renewal Plan for Downtown Urban Renewal Area approved. — Pursuant to Resolution 7-354, the "Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Downtown Renewal Area, as adopted by the National Capital Planning Commission on October 1, 1986.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved. — Pursuant to Resolution 7-364, the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the southwest Urban Renewal Area, Project C, as adopted by the National Capital Planning Commission on November 4, 1987.

Modification of Urban Renewal Plan for Northeast Urban Area, Project No. 1, located in Ward 2, approved. — Pursuant to Resolution 8-100 the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1989", effective October 10, 1989, the Council approved modifications to the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1992. — Pursuant to Resolution 9-184, effective February 14, 1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, Second Modification Approval Resolution of 1992. — Pursuant to Resolution 9-321, effective July 24, 1992, the Council approved modifications to the Urban Renewal Plan for the

Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the 14th Street Urban Renewal Area ("Project Area"), First Modification Approval Resolution of 1993. — Pursuant to Resolution 10-209, effective December 17, 1993, the Council approved modifications to the Urban Renewal Plan for the 14th Street Urban Renewal Area, located in Ward 1 as adopted by the National Capital Planning Commission.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(122) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Purpose of this section is to protect, and thus to attract, private developers by means of a guarantee that the plan cannot be modified against the will of those whose land would be

significantly affected by the proposed modification. *Hoeber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 895 (D.C. Cir. 1981).

Right to consent of persons affected by modification. — This section affords to those substantially and adversely affected by a proposed plan modification the right to consent or to refuse to consent, irrespective of whether the effect is direct or indirect. *Hoeber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 895 (D.C. Cir. 1981).

Consents are needed only from those who are substantially and adversely affected by a proposed plan modification. *Hoeber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 895 (D.C. Cir. 1981).

Agency may adopt regulations for determining whether person substantially or adversely affected. — The Redevelopment Land Agency may adopt regulations which will provide a method for determining whether an existing owner or lessee may be substantially and adversely affected by a proposed plan modification. *Hoeber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 895 (D.C. Cir. 1981).

Contested case procedures of the Administrative Procedure Act are not applicable to this section, as administrative decisions dealing with land-use-control questions involve general matters of public policy. *L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency*, 564 F.2d 515 (D.C. Cir. 1977).

Cited in *L'Enfant Plaza N., Inc. v. District of Columbia Redevelopment Land Agency*, 437 F.2d 698 (D.C. Cir. 1970).

§ 5-812. Tax exemption.

Effective July 1, 1979, real property owned by the Agency shall be exempt from taxation; provided however, that when such property is sold or leased pursuant to § 5-806, it shall be subject to taxation from the date of its conveyance or leasing by the Agency. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13; 1973 Ed., § 5-712; Mar. 3, 1979, D.C. Law 2-148, § 2, 25 DCR 7001.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 2-148. — Law 2-148, the "District of Columbia Redevelopment Land Agency Tax Exemption Act of 1978," was introduced in Council and assigned

Bill No. 2-386, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on November 28, 1978, and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-327 and transmitted to both Houses of Congress for its review.

§ 5-813. Employment and expenditures authorized.

The Agency is hereby authorized and empowered:

(1) To secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to § 1-1110; provided, that this exemption shall not apply to persons employed by the Agency on a permanent basis;

(2) To appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under §§ 5-801 to 5-820 and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; and

(3) To make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of §§ 5-801 to 5-820. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 5-713; Mar. 3, 1979, D.C. Law 2-139, § 3205(yy), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1, 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978,"

was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

§ 5-814. Annual report.

Before November 2nd of each year, the Agency shall make an annual report to the Council of its operations and expenditures for the immediately preceding fiscal year. The report shall include a financial balance sheet of the Agency's entire operations and statements of what the Agency proposes to do during the next succeeding fiscal year and any intended revisions of the rules governing disposition of land. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 15; 1973 Ed., § 5-714; Aug. 17, 1982, D.C. Law 4-140, § 2(d), 29 DCR 2862.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 4-140. — See note to § 5-802.

§ 5-815. Appropriations authorized.

(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in §§ 5-801 to 5-820, and other administrative expenses in connection therewith. The Commission is also authorized to receive any grants that the Congress may appropriate for said purposes to the various states and municipalities and the District of Columbia.

(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of \$20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by §§ 5-801 to 5-820. The Agency shall from time to time submit to the District Mayor estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Mayor shall be available from the said special trust fund for such expenses.

(c) As of the last day of the 10th fiscal year beginning after approval of §§ 5-801 to 5-820, or as of such later date as may be fixed by the Congress, there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting: (1) Such amount as may be necessary for the completion of any approved project the acquisition of which has been begun; and (2) such amount for operating expenses of the Agency for 1 year as may be approved by the District Mayor. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to subsection (b) of this section, then an amount equal to 50% of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of 10 years. The District Mayor shall include in his annual estimates of appropriations items for the payment of such installments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to: (1) The fund transferred and credited to miscellaneous receipts of the United States; (2) the cost to the Agency of the real property owned by it on said date; and (3) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 16; 1973 Ed., § 5-715.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-816, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Agency is a "federal agency" within meaning of the federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in their official capacity are maintainable, if at all, under that Act. *Goddard v. District of Columbia Redevelopment Land Agency*, 287 F.2d 343 (D.C. Cir.), cert. denied, 366 U.S. 910, 81 S. Ct. 1085, 6 L. Ed. 2d 235 (1961).

§ 5-816. Acquisition under §§ 5-101 to 5-115.

From and after the termination of the period of 1 year, beginning August 2, 1946, all authority granted by §§ 5-101 to 5-115, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by §§ 5-801 to 5-820. During said 1-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Mayor; provided, however, that failure of the Planning Commission or the District Mayor to approve or disapprove in writing within 60 days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in §§ 5-101 to 5-115 or in §§ 5-801 to 5-820 shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of §§ 5-801 to 5-820. Any real property acquired by the Agency under the authority of §§ 5-101 to 5-115 may be transferred or may be sold or leased by the Agency as provided in §§ 5-801 to 5-820 for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of §§ 5-801 to 5-820. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17; 1973 Ed., § 5-716; Jan. 2, 1975, 88 Stat. 1963, Pub. L. 93-604, title VI, § 605.)

Cross references. — As to National Capital Housing Authority as agency of District government, see § 5-102.

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-817, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-817. Private lending institutions.

(a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwithstanding any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security; provided, that no such loan without security shall be made in a sum in excess of \$2,500 unless insured as provided in Title I of the National Housing Act, as amended.

(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in §§ 5-801 to 5-820. Any life insurance company organized under the laws of the District or formed or organized under an act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a 1st lien to secure a loan previously made, without additional security; provided, that no such loan or advance shall be made in a sum in excess of \$2,500 unless insured as provided in Title I of the National Housing Act, as amended; and provided further, that the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the 1st lien. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 19; Aug. 2, 1954, 68 Stat. 630, ch. 649, title III, § 315; 1973 Ed., § 5-717.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-818, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

References in text. — Title I of the National Housing Act, referred to in the proviso in subsection (a) and in the first proviso in the second sentence in subsection (b) of this section, is the Act of June 27, 1934, 48 Stat. 1246, ch. 847.

Commercial properties located near an area of blight are subject to condemnation proceedings. *Donnelly v. District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (D.C. Cir. 1959), cert. denied, 361 U.S. 949, 80 S. Ct. 402, 4 L. Ed. 2d 381, rehearing denied, 362 U.S. 914, 80 S. Ct. 660, 4 L. Ed. 2d 622 (1960).

§ 5-818. Acceptance of financial assistance authorized; urban renewal projects.

(a) As an alternative method of financing its authorized operations and functions under the provisions of §§ 5-801 to 5-820 (in addition to that provided in § 5-815), the Agency is hereby authorized and empowered to accept financial assistance from the Secretary of Housing and Urban Development (hereinafter in this section referred to as the Secretary), in the form of advances of funds, loans, and capital grants pursuant to Title I of the Housing Act of 1949, as amended, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under §§ 5-801 to 5-820 for which advances of funds, loans, or capital grants may be made to a local public agency under Title I of the Housing Act of 1949, as amended, and the Agency, subject to the approval of the Council of the District of Columbia and subject to such terms, covenants, and conditions as may be prescribed by the Secretary pursuant to Title I of the Housing Act of 1949, as amended, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

(b) Subject to the approval of the Council of the District of Columbia, the Agency is authorized to accept from the Secretary advances of funds for surveys and plans in preparation of a project or projects authorized by §§ 5-801 to 5-820 which may be assisted under Title I of the Housing Act of 1949, as amended, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the Council of the District of Columbia shall determine to be necessary for the Planning Commission to carry out its functions under §§ 5-801 to 5-820 with respect to the project or projects to be assisted under Title I of the Housing Act of 1949, as amended.

(c) The District Mayor is authorized to include in his annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

(d) Notwithstanding the limitation contained in the last sentence of § 110(d) or in any other provision of Title I of the Housing Act of 1949, as amended, the Secretary is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said § 110(d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under Title I of the Housing Act of 1949, as amended. In the event such local grants-in-aid as are so allowed by the Secretary are not sufficient to meet the requirements for local grants-in-aid pursuant to Title I of the Housing Act of 1949, as amended, the Council of the District of Columbia is hereby authorized to enter into agreements with the Agency, upon which agreements the Secretary may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Mayor shall include items for such cash payments in his annual estimates of appropriations, and there are hereby authorized to be appropri-

ated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Secretary pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

(e) All receipts of the Agency in connection with any project or projects financed in accordance with this section with assistance under Title I of the Housing Act of 1949, as amended, whether in the form of advances of funds, loans, or capital grants made by the Secretary to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of §§ 5-801 to 5-820 with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Secretary or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

(e-1) Subject to the approval of the Council, the Mayor shall develop a 5-year plan for the expenditure of all receipts of the Agency in the form of proceeds, rentals, and revenues derived from any project undertaken in accordance with Title I of the Housing Act of 1949 (42 U.S.C. § 1437 et seq.) in excess of payments required to retire the debt to the Department of Housing and Urban Development. The plan shall be submitted to the Council by the Mayor as part of the fiscal year 1984 budget request documents. Revisions of the plan shall be made on an annual basis to reflect the projected budget for the next succeeding fiscal year and actual expenditures of the preceding fiscal year. Annual revisions shall be subject to approval of the Council.

(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under Title I of the Housing Act of 1949, as amended:

(1) Sections 5-802(6), 5-802(11), and 5-806(g), and the last sentence of § 5-805(b)(2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, 73rd Congress, approved June 12, 1934, as amended;

(2) The site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to § 5-805(b)(2), shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, 73rd Congress, approved June 12, 1934, as amended;

(3) Notwithstanding any other provisions of §§ 5-801 to 5-820, the Agency, pursuant to § 5-806(a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capital Housing Authority those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, 73rd Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of § 107 of the Housing

Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

(g) It is the purpose and intent of this section to authorize the District Mayor and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under Title I of the Housing Act of 1949, as amended. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of Title I of the Housing Act of 1949, as amended. As such a local public agency for all of the purposes of Title I of the Housing Act of 1949, as amended, the Agency is also authorized to borrow money from the Secretary or from private sources as contemplated by Title I of the Housing Act of 1949, as amended, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under Title I of the Housing Act of 1949, as amended, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

(h) Nothing contained in this section or in §§ 5-801 to 5-820 shall relieve the Secretary of his responsibilities and duties under § 105(c) or any other section of the Housing Act of 1949, as amended. The Secretary shall not enter into any contract of financial assistance under Title I of this Act with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress.

(i) In addition to its authority under any other provision of §§ 5-801 to 5-820, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are now or may hereafter be defined in Title I of the Housing Act of 1949, including, but not limited to, projects authorized without regard to the residential or nonresidential character or reuse of the urban renewal area), and in connection therewith the Agency, the District Mayor, the National Capital Planning Commission, and the other appropriate agencies operating within the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section; provided, that for the purpose of this subsection the word "redevelopment" wherever found in §§ 5-801 to 5-820 (except in § 5-802(14)) shall mean "urban renewal," and the references in § 5-805 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project.

(j) The District Mayor is hereby authorized to prepare a workable program as prescribed by § 101(c) of the Housing Act of 1949, as amended, and is also authorized to request the necessary funds for the preparation of said workable program. The Mayor may request the participation of the Agency in the preparation of said workable program and may include in his annual estimates of appropriations such funds as may be required by the Mayor or the Agency, or both, for this purpose. The District Mayor is hereby authorized, with or without reimbursement, to cooperate with the Agency in carrying out urban re-

newal projects and to utilize for that purpose the facilities and personnel of the District of Columbia under agreement with the Agency. (Aug. 2, 1946, ch. 736, § 20; July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609; Aug. 2, 1954, 68 Stat. 630, ch. 649, title III, § 316; Aug. 10, 1965, 79 Stat. 484, Pub. L. 89-117, title III, § 317; May 25, 1967, 81 Stat. 20, Pub. L. 90-19, § 3; 1973 Ed., § 5-717a; Aug. 17, 1982, D.C. Law 4-140, § 2(e), 29 DCR 2862.)

Cross references. — As to relocation payments and assistance for persons displaced by District programs or by Washington Metropolitan Area Transit Authority, see § 5-834.

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-819, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

Legislative history of Law 4-140. — See note to § 5-802.

References in text. — Title I of the Housing Act of 1949, referred to throughout this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

Sections 101(c), 105(c), 107, and 110(d) of the Housing Act of 1949, referred to in this section, were codified, respectively, to 42 U.S.C. §§ 1451(c), 1455(c), 1457, and 1460(d); however, these provisions were omitted pursuant to 42 U.S.C. § 5316. For present similar provisions, see generally, the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 et seq.

Delegation of authority under Law 4-140. — See Mayor's Order 83-127, May 10, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (123), (124), and (125) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Commercial properties located near an area of blight are subject to condemnation proceedings. *Donnelly v. District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (D.C. Cir. 1959), cert. denied, 361 U.S. 949, 80 S. Ct. 402, 4 L. Ed. 2d 381, rehearing denied, 362 U.S. 914, 80 S. Ct. 660, 4 L. Ed. 2d 622 (1960).

§ 5-819. Streets and highways; release, modification, or departure from approved redevelopment plan.

(a) In the making and approval of project area redevelopment plans, the Planning Commission and the Council of the District of Columbia shall not be limited or bound by the provisions of §§ 7-107, 7-117, 7-122, and 7-301 relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the federal government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Council in accordance with the provisions of § 5-811 or unless the modification or departure be approved by act of Congress.

(b) Any power granted the District Mayor or any District or federal agency by the District of Columbia Code or by any statute, may, in addition to the purposes now specified, be exercised in furtherance of the protection or carry-

ing out of any redevelopment plan or modification made and approved under §§ 5-801 to 5-820. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 21; July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609; 1973 Ed., § 5-718.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816, 5-817, 5-818, 5-820, 5-821, 5-825, 5-832, 5-837, and 7-133.

References in text. — Sections 7-117 and 7-301, referred to in subsection (a), were repealed March 10, 1983 by D.C. Law 4-201.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (126) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Co-

lumbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Hoerber v. District of Columbia Redevelopment Land Agency*, 483 F. Supp. 1356 (D.D.C. 1980), *aff'd*, 672 F.2d 894, 672 F.2d 895 (D.C. Cir. 1981).

§ 5-820. Severability.

If any provisions of §§ 5-801 to 5-820 or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of §§ 5-801 to 5-820 and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 22; July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609; 1973 Ed., § 5-719.)

Section references. — This section is referred to in §§ 5-801, 5-802, 5-803, 5-804, 5-805, 5-806, 5-807, 5-810, 5-813, 5-815, 5-816,

5-817, 5-818, 5-819, 5-821, 5-822, 5-825, 5-832, 5-837, and 7-133.

§ 5-821. Neighborhood development programs.

Notwithstanding any requirement or condition to the contrary in § 5-805 or 5-818(i) or in any other provision of law, the District of Columbia Redevelopment Land Agency may plan and undertake neighborhood development programs under Part B of Title I of the Housing Act of 1949 (as added by this section), subject to all of the provisions of §§ 5-801 to 5-820 to the extent not inconsistent with such Part B, and any such program shall be regarded as complying with the requirements of such §§ 5-805 and 5-818(i) and of such other provision of law if it meets the applicable requirements established under such part B. (Aug. 1, 1968, 82 Stat. 520, Pub. L. 90-448, title V, § 501(c); 1973 Ed., § 5-719a.)

Section references. — This section is referred to in § 5-822.

References in text. — Part B of Title I of

the Housing Act of 1949, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

The parenthetical phrase "as added by this section" has reference to § 501(b) of the Act of August 1, 1968, 82 Stat. 520, Pub. L. 90-448.

§ 5-822. Transfer to Agency of certain property near Maine Avenue — Authorized.

Subject to the provisions of §§ 5-820 to 5-829, the Council of the District of Columbia is authorized on behalf of the United States to transfer to the District of Columbia Redevelopment Land Agency established by § 5-803, all right, title, and interest of the United States in and to part or all of certain property in the said District, as follows: The area bounded by the east line of 14th Street Southwest, the existing southerly (or westerly) building line of Maine Avenue Southwest, the northerly line of Fort Lesley J. McNair at P Street Southwest, and the bulkhead line established pursuant to the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended, together with any land area extending channelward from said bulkhead line. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 1; 1973 Ed., § 5-720.)

Section references. — This section is referred to in §§ 5-823, 5-824, 5-825, 5-826, 5-827, 5-828, and 5-829.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (127) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Co-

lumbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-823. Same — Determination of necessity.

The Council of the District of Columbia shall, prior to transferring to the Agency right, title, and interest in and to any of the said property described in § 5-822, determine whether such property is necessary to the redevelopment of the southwest section of the District of Columbia in accordance with an urban renewal plan approved by it, and, if it so finds, it shall, acting on behalf of the United States, transfer and donate to the Agency all right, title, and interest of the United States in and to so much of said property as it determines is necessary to carry out such urban renewal plan. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 2; 1973 Ed., § 5-721.)

Section references. — This section is referred to in §§ 5-822, 5-825, 5-826, 5-827, 5-828, and 5-829.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (128) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-824. Same — Transfer of jurisdiction to Agency.

Subject to the provisions of § 5-826, the Council of the District of Columbia shall, at the time of transferring to the Agency right, title, and interest in and to any of the property described in § 5-822, also transfer to the Agency the Mayor's jurisdiction as provided by § 9-101 over so much of the said property as may be so transferred. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 3; 1973 Ed., § 5-722.)

Section references. — This section is referred to in §§ 5-822, 5-825, 5-826, 5-827, 5-828, and 5-829.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (129) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Co-

lumbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-825. Same — Lease of property by Agency; other transfers limited; priority of owner of displaced business concern.

(a) The Agency is hereby authorized, in accordance with §§ 5-801 to 5-820, to lease to a redevelopment company or other lessee such real property as may be transferred to the Agency under the authority of §§ 5-822 to 5-829 but may not otherwise dispose of such property except to the United States or any department or agency thereof, or to the District of Columbia, in accordance with § 5-826. In the event that real property acquired by the Agency from the United States pursuant to §§ 5-822 to 5-829 is transferred to the District of Columbia or to any department or agency of the United States pursuant to this section, such transfer shall be without reimbursement or transfer of funds.

(b) In connection with the leasing of the real property transferred to the Agency under the authority of §§ 5-822 to 5-829, together with the leasing of any real property lying between such real property so transferred and the southerly or westerly line of Maine Avenue as the same may be relocated in connection with carrying out an urban renewal plan, the Agency is authorized and directed to provide to the owner or owners of any business concern displaced from the area described in § 5-822, a priority of opportunity to lease,

either individually or as a redevelopment company solely owned by the owner or owners of 1 or more such business concerns, so much of such real property lying channelward of the southerly or westerly line of Maine Avenue as so relocated, at a rental based on the use-value of the real property so leased determined in accordance with the provisions of § 5-809, and § 1460(c)(4) of Title 42, United States Code, as may be required for the construction of commercial facilities at least substantially equal to the facilities from which such business concern was so displaced. The priority of opportunity created by this section is a personal right of the owners of businesses displaced. In the event of the death of any such owner of any such displaced business, the spouse of such owner, or, if there is no spouse, the children of such owner shall be entitled to exercise the priority of such owner in accordance with the provisions of this section, but in no event shall any such priority be otherwise transferable; provided, however, that the spouse or the children, as the case may be, shall have no greater priority than the priority holder would have had if living. For the purposes of exercising such priority, the spouse or children, as the case may be, shall be deemed to be owner of such business concern so displaced. When the real property affected by the provisions of this subsection becomes available for leasing by the Agency, the Agency shall notify, in writing, the owners of the business concerns displaced, as to the availability of such real property for leasing to such owners in accordance with the provisions of this subsection. The Agency shall give such owners so notified a period of 180 days to notify the Agency, in writing, of their intention to proceed in accordance with the general development plan of the Agency for the area lying channelward of Maine Avenue, as so relocated, and to demonstrate to the Agency their ability to carry out so much of such plan as may be embraced within the area which they desire to lease. If at the end of such period of 180 days, such owners have failed to make a demonstration to that effect which is satisfactory to the Agency, the priority of opportunity provided by this subsection shall no longer continue to be available to such owners, except that if after the end of such 180-day period the Agency shall change the terms under which real property is to be leased, or the redevelopment plan for the area described in § 5-822 is changed so as to affect the economic value of the leasehold, the Agency shall in writing notify each such owner of the change or changes so made and give to such owner so notified a period of 60 days within which to advise the Agency in writing of his intention and to demonstrate his ability to proceed as aforesaid.

(c)(1) Notwithstanding any other provision of law, whenever, pursuant to subsection (b) of this section, the Agency offers leaseholds to persons entitled to a priority of opportunity to lease under the provisions of this section, the annual rent prescribed in such lease shall not exceed an amount which is the greater of:

(A) An amount equal to 6% of the residual value of the land for the prescribed use to which any owner of a displaced business concern shall put such land under such lease;

(B) The annual amount which the Agency shall be required to pay in principal and interest on a 40-year loan of an amount equal to the residual

value of the land under such lease which value is the residual value of the land which was determined by the Agency, in accordance with this subsection, and on the basis of which such land was initially leased under this section; or

(C) The sum of: (i) The amount determined under subparagraph (A) or (B) of this paragraph, whichever is greater; and (ii) 50% of the product of the occupancy cost factor for the class and character of the business of such lessee times the amount by which the lessee's actual annual gross sales income exceeds the estimated gross sales income (for the class and character of the displaced business) used by the Agency in determining the residual value of the land leased to such lessee.

(2) In the case of any land which the Agency leases under this section, the annual rent prescribed by the Agency in the lease of such land shall not, during the 43-year period beginning on the date such land was first leased by the Agency under this section, be less than the amount determined under subparagraph (B) of paragraph (1) of this subsection. In the case of any land which the Agency leases under this section to a displaced business, the residual value of such land:

(A) May be redetermined by the Agency after the expiration of 25 years from the date such land was first leased by the Agency and at the end of each 10-year period thereafter; or

(B) Shall be redetermined by the Agency if at the end of the 25-year period from the date such land was first leased by the Agency or at the end of each 10-year period thereafter, the lessee requests the Agency to redetermine such residual value.

(3) The residual value of such land shall make due allowance for the cost to the owner of the displaced business of all improvements and public charges on such land, and shall not exceed the maximum fair use value economically feasible to permit the reestablishment of a business of the class and character of such displaced business.

(4) Each business holding a lease under this act shall furnish annually to the Agency (on such date as the Agency may by regulation prescribe) a copy of the sales tax return filed by such business under the District of Columbia Sales Tax Act, which copy was furnished to the business under § 47-2018(a). (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 4; Dec. 6, 1967, 81 Stat. 542, Pub. L. 90-176, § 1; 1973 Ed., § 5-723.)

Section references. — This section is referred to in §§ 5-822, 5-826, 5-827, 5-828, and 5-829.

References in text. — "Section 1460 (c)(4) of Title 42", referred to in subsection (b), was omitted by act of August 1, 1968, 82 Stat. 522, Pub. L. 90-448.

"This act," referred to in paragraph (4) of subsection (c) of this section, is the Act of September 8, 1960, 74 Stat. 871, Pub. L. 86-736.

District of Columbia Sales Tax Act, referred to in paragraph (4) of subsection (c) of this section, is the Act of May 27, 1949, 63 Stat. 112, ch. 146.

Agency not entitled to presumption of

expertise. — No presumption of expertise, either in interpreting or applying the provision of this section relating to the notice given to displaced businesses of the availability of other real property for leasing, can be given to the Agency. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543 (D.C. Cir. 1970).

Failure to make lease offer to displaced owner violates section. — The failure of the Agency to make a specific lease offer to the owner of a business displaced by an urban renewal program involves a violation of this section which is subject to judicial review and correction. *Cy Ellis Raw Bar v. District of Colum-*

bia Redevelopment Land Agency, 433 F.2d 543 (D.C. Cir. 1970).

And warrants permanent injunction. — The failure of the Agency to make a specific lease offer to the owner of a business displaced

by an urban renewal program is the kind of irreparable injury that would warrant a permanent injunction. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543 (D.C. Cir. 1970).

§ 5-826. Same — Reversion provisions.

Notwithstanding §§ 5-822 to 5-825, if any of the real property transferred to the Agency under the authority of §§ 5-822 to 5-829 is not leased by the Agency in accordance with an urban renewal plan approved by the Council of the District of Columbia or otherwise disposed of, on or before the date the Secretary of Housing and Urban Development makes the final federal capital grant payment to the Agency for the project pursuant to Title I of the Housing Act of 1949, as amended, then the right, title, and interest in and to so much of the said real property as is not so leased or otherwise disposed of by such date shall revert to the United States, subject to the exclusive control and jurisdiction of the Mayor of the District of Columbia, and subject to the provisions of §§ 8-111 and 8-112. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 5; May 25, 1967, 81 Stat. 25, Pub. L. 90-19, § 17; 1973 Ed., § 5-724.)

Section references. — This section is referred to in §§ 5-822, 5-824, 5-825, 5-827, 5-828, and 5-829.

References in text. — Title I of the Housing Act of 1949, as amended, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the func-

tions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-827. Same — Council not required to transfer property needed for municipal purposes.

Nothing contained in §§ 5-822 to 5-829 shall be construed as requiring the said Council of the District of Columbia to transfer the right, title, and interest in and to so much of the property described in § 5-822 as the Council may determine, in its discretion, is required for municipal purposes or is to continue to be owned by the United States under the jurisdiction of the Mayor, for the benefit of the District of Columbia. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 6; 1973 Ed., § 5-725.)

Section references. — This section is referred to in §§ 5-822, 5-825, 5-826, 5-828, and 5-829.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C.

Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-828. Same — Not considered a local grant-in-aid.

No transfer or donation of any interest in real property under the authority of §§ 5-822 to 5-829 shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with federal assistance under Title I of the Housing Act of 1949, as amended. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 7; 1973 Ed., § 5-726.)

Section references. — This section is referred to in §§ 5-822, 5-825, 5-826, 5-827, and 5-829.

References in text. — Title I of the Housing

Act of 1949, as amended, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

§ 5-829. Same — Definitions.

As used in §§ 5-822 to 5-829, the terms "Agency," "lessee," "real property," "redevelopment," and "redevelopment company" shall have the respective meanings provided for such terms by § 5-802. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 8; 1973 Ed., § 5-727.)

Section references. — This section is referred to in §§ 5-822, 5-825, 5-826, 5-827, and 5-828.

§ 5-830. Relocation services for displaced persons and concerns; preference in vacancies in government housing; housing surveys.

The Mayor of the District of Columbia is hereby authorized to provide such relocation services as he shall determine to be reasonable and necessary to individuals, families, business concerns, and nonprofit organizations which may be or have been displaced from real property by actions of the United States or of the government of the District of Columbia, except the District of Columbia Redevelopment Land Agency, such actions to include, but not be limited to, acquisition of property for public works projects, condemnation of unsafe and insanitary buildings, and enforcement of the laws and regulations relating to housing. The Mayor shall provide that such individuals and families so displaced shall be given the same preference with respect to vacancies occurring in housing owned or operated within the District of Columbia by federal or District of Columbia governmental agencies as is provided in § 5-807(b). The Mayor is authorized to make housing surveys in order to carry

out §§ 5-830 to 5-833. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 1; 1973 Ed., § 5-728.)

Cross references. — As to relocation payments and assistance in Community Development Program activities, see § 5-903.

Section references. — This section is referred to in §§ 5-832 and 5-833.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all

of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-831. Determination of availability of housing for displaced persons.

Prior to the acquisition of real property for any public works project of the government of the District of Columbia, the Mayor shall make the same determinations with respect to the availability of housing for displaced individuals and families as is required by § 5-807(a). (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 3; 1973 Ed., § 5-730.)

Section references. — This section is referred to in §§ 5-830 and 5-833.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-832. District of Columbia Relocation Assistance Office.

There is hereby established within the District of Columbia Redevelopment Land Agency an office to be known as the District of Columbia Relocation Assistance Office (hereinafter referred to as the "Office"). The Office shall provide the relocation services authorized by § 5-830, administer the payments authorized by former § 5-729 and provide the relocation assistance which the District of Columbia Redevelopment Land Agency is authorized to provide by §§ 5-801 to 5-820 and any other act. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 4; 1973 Ed., § 5-731.)

Section references. — This section is referred to in §§ 5-830 and 5-833.

§ 5-833. Regulations to carry out §§ 5-830 to 5-833.

The Council of the District of Columbia is hereby authorized to make regulations to carry out the purposes of §§ 5-830 to 5-833. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 5; 1973 Ed., § 5-732.)

Section references. — This section is referred to in § 5-830.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(131) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

New implementing regulations. — Pursuant to this section, the "Relocation Regulation Payment Increase Amendment Act of 1978" (D.C. Law 2-122, Oct. 13, 1978, 25 DCR 1547) was enacted.

§ 5-834. Relocation payments and assistance for persons displaced by District programs or by Washington Metropolitan Area Transit Authority; relocation services for persons displaced by condominium or cooperative conversion, or by rehabilitation, demolition, or discontinuance from housing use.

(a) Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to §§ 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Mayor of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a federal agency by this act. Whenever real property is acquired for such a program or project on or after January 2, 1971, such Mayor or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a federal agency by Title III of this act.

(b)(1) If a housing accommodation within the geographic boundaries of the District of Columbia is converted into a condominium or cooperative, substantially rehabilitated or demolished, or discontinued from housing use, the Mayor shall provide relocation services in the manner required by subsection (a) of this section to low-income tenants who move from the accommodation. Services include, at a minimum, ascertaining the relocation needs for each

household, providing current information on the availability of comparable housing of suitable size, supplying information concerning federal and District housing programs, and providing counseling to displaced persons in order to minimize hardships in adjusting to relocation.

(2) For purposes of this section, the term:

(A) "Comparable housing" means rental or homeownership units with equivalent benefits and services included in the monthly payments.

(B) "Suitable size" means for a 1-person family, an efficiency unit; for a 2-person family, a 1-bedroom unit; for a family of 3 or 4 persons, a 2-bedroom unit; for a family of 5 or 6 persons, a 3-bedroom unit; and for a family of 7 or more persons, a 4-bedroom unit. In addition, the meaning of the term "suitable size" is increased as necessary to allow children and unmarried adults of the opposite sex to have separate sleeping rooms. In determining the meaning of the term "suitable size," 1 person living in a 1-bedroom unit is eligible for relocation in a 1-bedroom comparable unit. (Jan. 2, 1971, 84 Stat. 1899, Pub. L. 91-646, title II, § 209; 1973 Ed., § 5-732a; Sept. 28, 1979, D.C. Law 3-19, § 12, 26 DCR 361; Sept. 10, 1980, D.C. Law 3-86, §§ 211, 303(b), 27 DCR 2975.)

Cross references. — As to public utility relocation expenses, see §§ 5-804, 7-135, and 7-606.

Section references. — This section is referred to in § 45-1622.

Legislative history of Law 3-19. — Law 3-19, the "Cooperative Regulation Act of 1979," was introduced in Council and assigned Bill No. 3-10, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 22, 1979, and June 5, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-63 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-86. — Law 3-86, the "Rental Housing Conversion and Sale Act of 1980," was introduced in Council and assigned Bill No. 3-222, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980, and June 17, 1980, respectively. Signed by the Mayor on June 27, 1980, it was assigned Act No. 3-204

and transmitted to both Houses of Congress for its review.

References in text. — The words "§§ 210 and 211 of this title" and "Title III of this act," referred to in the first and second sentences, respectively, of subsection (a) of this section, refer to §§ 210 and 211 of title II, and title III, respectively, of the Act of January 2, 1971, 84 Stat. 1894, Pub. L. 91-646.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-835. Relocation advisory services for persons displaced by condominium conversion, or by rehabilitation, demolition, or discontinuance from housing use of building.

Whenever a building in the District of Columbia is converted from rental to condominium units, or is substantially rehabilitated or demolished, or is dis-

continued from housing use, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted, substantially rehabilitated, demolished, or discontinued building. This includes: Ascertaining the relocation needs for each household; providing current information on the availability of equivalent substitute housing; supplying information concerning federal and District housing programs; and providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation. (1973 Ed., § 5-732b; Mar. 29, 1977, D.C. Law 1-89, title V, § 516, 23 DCR 9532b; Mar. 16, 1978, D.C. Law 2-54, § 804, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Legislative history of Law 1-89. — Law 1-89, the "Condominium Act of 1976," was introduced in Council and assigned Bill No. 1-179, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 29, 1976 and June 20, 1976, respectively. Signed by the Mayor on August 6, 1976, it was assigned Act No. 1-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-54. — Law 2-54, the "Rental Housing Act of 1977," was introduced in Council and assigned Bill No. 2-152, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 15, 1977, and November 29, 1977, respectively. There being

no action by the Mayor, it was assigned Act No. 2-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-121. — Law 2-121, the "Housing Discontinuance Regulation Act of 1978," was introduced in Council and assigned Bill No. 2-333, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on June 13, 1978, June 27, 1978, and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-251 and transmitted to both Houses of Congress for its review.

Definitions applicable. — The definitions in §§ 45-1801 and 45-1802 apply to this section.

§ 5-836. Properties near Maryland Avenue and Virginia Avenue — Transfer to Agency authorized.

In accordance with the provisions of §§ 5-836 to 5-840, the Mayor of the District of Columbia, consistent with the Council of the District of Columbia's approval of the urban renewal plan requiring such action, is authorized and directed on behalf of the United States of America to transfer to the Agency all right, title, and interest of the United States in and to the following real properties in the District of Columbia:

(1) Part of Maryland Avenue Southwest, of Thirteen-and-a-Half Street Southwest, and of 13th Street Southwest, described as follows: Beginning for the same at the intersection of the northerly line of Maryland Avenue Southwest, with the east line of Fourteenth Street Southwest, and running thence along the said northerly line of Maryland Avenue in a northeasterly direction 256.25 feet to the west line of Thirteen-and-a-Half Street Southwest; thence along the said line of Thirteen-and-a-Half Street due north 251.67 feet to the south line of D Street Southwest; thence due east 70.0 feet to the east line of Thirteen-and-a-Half Street; thence along the said east line of Thirteen-and-a-Half Street due south 226.50 feet to the northerly line of Maryland Avenue; thence along the said line of Maryland Avenue in a northeasterly direction 256.50 feet to the west line of Thirteenth Street Southwest; thence along the said west line of Thirteenth Street due north 140.92 feet to the south line of D

Street; thence due east 110.0 feet to the east line of Thirteenth Street Southwest; thence along the said line of Thirteenth Street due south 101.67 feet to the northerly line of Maryland Avenue; thence along the northerly line of Maryland Avenue in a northeasterly direction 255.85 feet; thence leaving the said line of Maryland Avenue and running along the arc of a circle, the radius of which is 811.27 feet, a central angle of 1 degree 40 minutes 55 seconds, deflecting to the left an arc distance of 23.82 feet; thence south 70 degrees 00 minutes 00 seconds west 592.28 feet; thence south 64 degrees 54 minutes 00 seconds west 146.81 feet; thence along the arc of a circle, the radius of which is 60.0 feet, a central angle of 60 degrees 36 minutes 40 seconds, deflecting to the right an arc distance of 63.47 feet to a point of tangent; thence south 60 degrees 36 minutes 40 seconds west 184.47 feet; thence north 51 degrees 37 minutes 00 seconds west 38.0 feet to a point of curve; thence along the arc of a circle, the radius of which is 47.0 feet, a central angle of 51 degrees 37 minutes, deflecting to the right an arc distance of 42.34 feet to a point of tangent; thence due north 30.06 feet to the point of beginning, containing 61,786.20 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 173, page 458.

(2) Part of 13th Street Southwest, closed, part of Thirteen-and-a-Half Street Southwest, closed, and part of E Street Southwest, closed, as per plat recorded in the Office of the Surveyor of the District of Columbia in Book 140, page 73, described in 1 piece, as follows: Beginning for the same at a point in the southerly line of Maryland Avenue Southwest, said point being south 70 degrees 28 minutes 40 seconds west 361.01 feet from the intersection of the west line of Twelfth Street Southwest, with the said southerly line of Maryland Avenue, said point being also the northwesterly corner of original square 299; and running thence along the east line of Thirteenth Street Southwest, closed, due south 409.71 feet; thence due west 95.59 feet; thence north 71 degrees 17 minutes 15 seconds west 15.21 feet to the west line of said Thirteenth Street closed; thence along said line due north 79.47 feet to the south line of E Street Southwest, closed, said point being also the northeast corner of original square 270; thence along the south line of said E Street closed due west 234.62 feet; thence north 71 degrees 17 minutes 15 seconds west 106.13 feet; thence north 51 degrees 37 minutes 00 seconds west 90.15 feet to the north line of said E Street closed; thence along said line due east 94.12 feet to the west line of Thirteen-and-a-Half Street Southwest, closed, said point being also the southeast corner of original square east-of-267; thence along the west line of said Thirteen-and-a-Half Street closed due north 85.83 feet to the said southerly line of Maryland Avenue; thence along said line north 70 degrees 28 minutes 40 seconds east 74.27 feet to the east line of said Thirteen-and-a-Half Street closed, said point being also the northwesterly corner of original square 269; thence along the east line of Thirteen-and-a-Half Street closed due south 110.65 feet to the north line of said E Street closed; thence along said line due east 241.66 feet to the west line of Thirteenth Street closed; thence along said line due north 196.33 feet to the southerly line of said Maryland Avenue; thence along said line north 70 degrees 28 minutes 40 seconds east 116.71 feet to the point of beginning, con-

taining 80,206.53 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 183, page 81.

(3) Part of Maryland Avenue Southwest, described as follows: Beginning for the same at the intersection of the west line of Twelfth Street Southwest, with the southerly line of Maryland Avenue Southwest, said point being also the northeasterly corner of original square 299; and running thence along the said southerly line of Maryland Avenue south 70 degrees 28 minutes 40 seconds west 889.79 feet; thence north 53 degrees 21 minutes 10 seconds east 104.83 feet; thence north 72 degrees 43 minutes 00 seconds east 790.21 feet to the point of beginning, containing 13,733.95 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 183, page 81.

(4) Parts of 3rd Street Southwest, 4th Street Southwest, and Virginia Avenue Southwest, abutting square 537, described in 1 piece as follows: Beginning for the same at the intersection of the north line of E Street Southwest, with the west line of Third Street Southwest, said point also being the southeast corner of said square 537, and running thence along the said line of Third Street, due north 122.08 feet to the southerly line of Virginia Avenue Southwest; thence along said line of Virginia Avenue in a northwesterly direction 598.0 feet to the east line of Fourth Street Southwest; thence along said line of Fourth Street due south 323.33 feet to the southwest corner of said square 537; thence due west 13.0 feet; thence due north 373.68 feet; thence in a southeasterly direction, parallel with and 16.0 feet southwestwardly at right angles from the centerline of track numbered 1 of railroad of the Philadelphia, Baltimore, and Washington Railroad Company, 633.12 feet; thence due south 160.60 feet; thence due west 19.36 feet to the point of beginning, containing 33,698.44 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 413.

(5) Parts of 3rd Street Southwest, Virginia Avenue Southwest, and public space abutting square N-583, described in 1 piece, as follows: Beginning for the same at the intersection of the north line of E Street Southwest, with the east line of Third Street Southwest, said point also being the southwest corner of square N-583, and running thence due west 20.42 feet; thence due north 135.50 feet; thence in a southeasterly direction, parallel with and 16.0 feet southwestwardly at right angles from the centerline of track numbered 1 of railroad of the Philadelphia, Baltimore, and Washington Railroad Company, 390.04 feet; thence due south 4.23 feet; thence due west 225.71 feet to the southeast corner of said square N-583; thence along said square due north 40.0 feet to the southwesterly line of Virginia Avenue Southwest; thence along said line in a northwesterly direction 128.33 feet to the said east line of Third Street; thence along said line due south 82.67 feet to the point of beginning, containing 18,229.36 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 413.

(6) Part of Virginia Avenue, 6th Street, and public space abutting square S-463, described as follows: Beginning for the same at the intersection of the

west line of Sixth Street, southwest, with the northerly line of Virginia Avenue, said point of beginning being also the most southerly corner of square S-463; and running thence along the said west line of Sixth Street due north 75.33 feet; thence due east 9.25 feet; thence due south 106.15 feet; thence in a northwesterly direction along the line 25.90 feet from and parallel to the said northerly line of Virginia Avenue north 70 degrees 17 minutes 40 seconds west 522.42 feet; thence due north 20.0 feet; thence due east 134.24 feet to the northwest corner of said square S-463; thence along the west line of said square due south 40.58 feet to the said northerly line of Virginia Avenue; thence in a southeasterly direction along the said northerly line of Virginia Avenue south 70 degrees 17 minutes 40 seconds east 370.0 feet to the point of beginning, containing 16,461.50 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 176, page 372.

(7) Part of D Street and Maryland Avenue, Southwest, described as follows: Beginning for the same at the southeast corner of square 386, and running thence due south 14.26 feet; thence due west 605.71 feet to a point of curve; thence along the arc of a circle, the radius of which is 600.0 feet, deflecting to the left an arc distance of 125.58 feet; thence north 70 degrees 28 minutes 00 seconds east 774.97 feet; thence due south 47.51 feet to the northeast corner of said square 386; thence along the northwesterly boundary of said square in a southwesterly direction 432.25 feet to the northwest corner of said square; thence due south 40.0 feet to the southwest corner of said square; thence along the southerly boundary of said square due east 407.42 feet to the point of beginning, containing 39,922.0 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 173, page 396. (Nov. 2, 1965, 79 Stat. 1180, Pub. L. 89-317, § 1; 1973 Ed., § 5-733.)

Section references. — This section is referred to in §§ 5-837, 5-839, and 5-840.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as pro-

vided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-837. Same — Lease or sale by Agency authorized.

The Agency is hereby authorized in accordance with §§ 5-801 to 5-820 to lease or sell, as an entirety or parts thereof separately, to 1 or more redevelopment companies or other lessees or purchasers, such real property as may be transferred to the Agency under the authority of §§ 5-836 to 5-840. (Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89-317, § 2; 1973 Ed., § 5-734.)

Section references. — This section is referred to in §§ 5-836, 5-839, and 5-840.

§ 5-838. Same — Transfer of rights-of-way by Agency to District authorized.

The Agency is authorized to transfer to the government of the District of Columbia all right, title, and interest of the Agency in that portion of the right-of-way formerly occupied by the railroads, which is now a part of the land included in the District of Columbia highway system, for which the Agency compensated the railroads and acquired the interest of said railroads, and the Mayor of the District of Columbia is hereby authorized in this instance to pay the Agency the sum of \$82,896 for said sites, which are described as follows:

(1) Part of Thirteen-and-a-Half Street Southwest, and E Street Southwest described in 1 piece as follows: Beginning for the same at the intersection of the east line of Thirteen-and-a-Half Street Southwest with the northeasterly line of Maine Avenue Southwest; and running thence north 51 degrees 37 minutes 00 seconds west 119.22 feet to the southerly line of said Thirteen-and-a-Half Street and E Street closed by plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73; thence along said line south 71 degrees 17 minutes 15 seconds east 106.13 feet to the south line of said E Street; thence along said line due west 7.04 feet to the east line of said Thirteen-and-a-Half Street; thence along said line due south 40.0 feet to the point of beginning containing 1,990.50 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 308.

(2) Part of 13th Street Southwest, described as follows: Beginning for the same at the intersection of the east line of Thirteenth Street Southwest with the northeasterly line of Maine Avenue Southwest; and running thence north 71 degrees 17 minutes 15 seconds west 116.14 feet to the west line of said Thirteenth Street; thence along said line due north 42.37 feet to the southerly line of Thirteenth Street closed by plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73; thence along said line south 71 degrees 17 minutes 15 seconds east 15.21 feet; thence still along said line due east 95.59 feet to the said east line of Thirteenth Street; thence along said line due south 74.75 feet to the point of beginning containing 6,209.20 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 308. (Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89-317, § 3; 1973 Ed., § 5-735.)

Section references. — This section is referred to in §§ 5-836, 5-837, 5-839, and 5-840.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 5-839. Same — Transfer not a local grant-in-aid.

No transfer or donation of any interest in real property under the authority of §§ 5-836 to 5-840 shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with federal assistance under Title I of the Housing Act of 1949, as amended. (Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89-317, § 4; 1973 Ed., § 5-736.)

Section references. — This section is referred to in §§ 5-836, 5-837, and 5-840.

Act of 1949, as amended, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

References in text. — Title I of the Housing

§ 5-840. Same — Definitions.

As used in §§ 5-836 to 5-840, the terms "Agency," "lessee," "purchaser," "real property," "redevelopment," and "redevelopment company" shall have the respective meanings provided for such terms by § 5-802. (Nov. 2, 1965, 79 Stat. 1185, Pub. L. 89-317, § 5; 1973 Ed., § 5-737.)

Section references. — This section is referred to in §§ 5-836, 5-837, and 5-839.

CHAPTER 9. COMMUNITY DEVELOPMENT.

Sec.

5-901. Findings and objectives.

5-902. Community Development Program —
Annual preparation and submission to Council; content; public hearings.

5-903. Same — Activities permitted.

5-904. Same — Implementation.

Sec.

5-905. Acquisition and disposition of real property.

5-906. Rehabilitation of private property; loans and grants; insurance; determination of public use.

5-907. Construction; severability.

§ 5-901. Findings and objectives.

(a) The Council finds and declares that the District of Columbia faces critical social, economic, and environmental problems arising in significant measures from:

(1) The concentration of poverty in areas of the city;

(2) Overcrowding and deterioration of housing, exacerbated by inadequate construction of new units for the growing number of households, and inadequate resources to provide for the rehabilitation of existing units for use by residents of the affected areas;

(3) Inadequate and inappropriate public and private investment and re-investment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and

(4) Lack of essential commercial facilities and services in many of the city's communities; and

(5) Need to improve the overall quality of the urban environment for the people of the District of Columbia.

(b) The Council further finds and declares that the future welfare of the District of Columbia and the well-being of its citizens depend on the establishment and maintenance of the District of Columbia as a viable physical, social, economic, and political community, and require for the benefit of the communities being directly affected:

(1) Systematic and sustained action to eliminate blight, to conserve and renew aging urban neighborhoods, to improve the living environment of low and moderate income families, and to develop new residential and economic activity centers throughout the District;

(2) Substantial expansion of and greater continuity in the scope and level of federal and local financial assistance together with increased private investment in support of community development activities; and

(3) Continuing effort at all levels of government to develop programs to meet identified needs and to improve the functioning of departments and agencies responsible for planning, implementing, and evaluating community development efforts.

(c) The primary objective of this chapter is the maintenance and development of the District of Columbia as a viable urban community, by providing decent housing, a suitable living environment and expanding economic oppor-

tunities, principally for persons of low and moderate income. Consistent with this primary objective the chapter provides for the support of community development activities which are directed toward the following specific objectives:

(1) The elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community;

(2) The elimination of conditions which are detrimental to health, safety, and public welfare and the establishment of programs to protect and improve the quality of the urban environment;

(3) The conservation and expansion of the District's housing stock in order to provide a suitable living environment for all persons, principally those of low and moderate income;

(4) The expansion and improvement of the quantity and quality of community services, particularly for persons of low and moderate income, which are essential for sound community development and for the development of a viable urban community;

(5) A more rational utilization of land and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) The reduction of the isolation of income groups within the community and the promotion of an increase in the diversity and vitality of neighborhoods through the expansion of housing opportunities for persons of low and moderate income, particularly those with large families;

(7) The restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) The establishment of data-gathering, planning, policy, and program development which will ensure effective monitoring of and programming responsive to the changing numbers, characteristics, and needs of the people of the District of Columbia; and

(9) The continuation of development activities in those areas previously covered by urban renewal or neighborhood development plans until completed.

(d) Following the approval of a Community Development Program in such areas as the Council of the District of Columbia, upon recommendation of the Mayor, shall designate, the Mayor is authorized to prohibit any new construction in any area designated for this purpose as a community development area in a Community Development Program; new construction includes substantial remodeling, conversion, rebuilding, and enlargement or extension of major structural improvements on existing buildings, but does not include ordinary maintenance, remodeling, or changes necessary to continue occupancy. (1973 Ed., § 5-1001; Dec. 16, 1975, D.C. Law 1-39, § 2, 22 DCR 3436; Feb. 26, 1981, D.C. Law 3-115, § 3, 27 DCR 5630.)

Legislative history of Law 1-39. — Law 1-39, the "Community Development Act of 1975," was introduced in Council and assigned Bill No. 1-135, which was referred to the Com-

mittee on Housing and Urban Development. The Bill was adopted on first and second readings on August 5, 1975, and September 9, 1975, respectively. Signed by the Mayor on Oc-

tober 9, 1975, it was assigned Act No. 1-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-115. — Law 3-115, the "Community Development Act of 1975 Amendment Act of 1980," was introduced in Council and assigned Bill No. 3-404, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 25, 1980, and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-309 and transmitted to both Houses of Congress for its review.

Capitol Gateway Project. — D.C. Law 4-84 provided that new construction, substantial rehabilitation, subdivision formation, or street and alley closings in the Capitol Gateway Project area is prohibited.

Delegation of functions with respect to Capital City Business and Industrial Park. — See Mayor's Order 85-125, July 18, 1985.

Amendment of Mayor's Order 85-125, delegation of functions with respect to Capital City Business and Industrial Park. — See Mayor's Order 88-64, March 15, 1988.

§ 5-902. Community Development Program — Annual preparation and submission to Council; content; public hearings.

(a) The Mayor annually shall prepare and submit to the Council a proposed Community Development Program (as such program is defined or may hereafter be defined in Title I of the Housing and Community Development Act of 1974), which:

(1) Sets forth a summary of a 3-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs, and specifies both short- and long-term community development objectives which have been developed in accordance with area-wide development planning and national urban growth policies;

(2) Describes a program which:

(A) Includes the activities to be undertaken to meet the identified community development needs and objectives, together with the estimated costs and location of such activities;

(B) Indicates the resources which are proposed to be made available toward meeting the identified needs and objectives; and

(C) Indicates the environmental review status of proposed community development activities;

(3) Describes a program designed to:

(A) Eliminate or prevent slums, blight, and deterioration where such conditions or needs exist; and

(B) Provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate;

(4) Includes a housing assistance plan which:

(A) Accurately surveys the condition of the housing stock in the community and defines the housing assistance needs of lower-income persons, including elderly and handicapped persons, large families, persons living in overcrowded conditions, persons paying more than 25% of their income for rent, and persons displaced or to be displaced, residing in or expected to reside in the community during the implementation of the plan;

(B) Specifies a realistic annual goal for the number of dwelling units or persons to be assisted, including:

(i) The proposed number of new, rehabilitated, and existing dwelling units; and

(ii) The sizes and types of housing units and assistance proposed to meet the needs of lower-income persons in the community as defined in the plan; and

(C) Indicates the general locations of proposed housing for lower-income persons, with the objective of:

(i) Furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible;

(ii) Promoting greater choice of housing opportunities and avoiding concentrations of assisted persons in areas containing a high proportion of low-income persons; and

(iii) Assuring the availability of public facilities and services adequate to serve proposed housing projects; and

(5) Includes such other materials, certifications, and assurances as may be required by law or regulation as conditions for financial assistance under the Housing and Community Development Act of 1974, and any other such requirements as may be specified by District of Columbia law.

(b) In preparing the proposed Community Development Program, the Mayor shall:

(1) Provide citizens with all information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(2) Hold at least 2 public hearings to obtain the views of citizens on community development and housing needs; and

(3) Provide citizens a full and meaningful opportunity to participate in the planning, development and evaluation of the annual Community Development Program and any amendments or modifications thereto.

(c) Prior to the exercise of any powers granted by this act, the Mayor shall have submitted the proposed Community Development Program to the Council, and the Council shall have approved the same by resolution following a public hearing thereon; provided, that the Council may approve the program with conditions and the program as so conditioned shall be the approved Community Development Program; and provided further, that an approved Community Development Program may be modified at any time in accordance with the procedures herein prescribed for its original approval. Notwithstanding the above, the Mayor shall have the authority to make minor modifications consistent with the intent of the approved program, only after such modifications have been submitted to the Council and have not been disapproved within 30 days, except that the Council may approve such modifications before the 30-day period has expired. The 30-day period for Council review shall not include Saturdays, Sundays, legal holidays, or days that pass during a recess of the Council. (1973 Ed., § 5-1002; Dec. 16, 1975, D.C. Law 1-39, § 3, 22 DCR 3439; Aug. 1, 1985, D.C. Law 6-15, § 10, 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-192, § 22, 33 DCR 7836.)

Section references. — This section is referred to in § 5-906.

Emergency act amendments. — For temporary amendment of section, see § 2 of the District of Columbia Community Development Act of 1975 Emergency Amendment Act of 1991 (D.C. Act 9-91, October 21, 1991, 38 DCR 6576).

Legislative history of Law 1-39. — See note to § 5-901.

Legislative history of Law 6-15. — Law 6-15, the "Legislative Veto Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

References in text. — The Housing and Community Development Act of 1974, referred to in the introductory language and in paragraph (5) of subsection (a) of this section, is the Act of August 22, 1974, 88 Stat. 633, Pub. L. 93-383.

"This act," referred to at the beginning of subsection (c), is the "District of Columbia Community Development Act of 1975."

Community Development Block Grant Program. — Pursuant to Resolution 5-766, the "Community Development Block Grant Program Resolution of 1984," effective June 26, 1984, the Council approved the final statement of community development objectives and projected use of funds for the Tenth Year Community Development Block Grant Program and authorized the filing of the final statement.

Pursuant to Resolution 6-242, the "Community Development Block Grant Program Resolution of 1985," effective July 9, 1985, the Council approved the final statement of community development objectives and projected use of funds for the Eleventh Year Community Development Block Grant Program, authorized the filing of the final statement, and approved modifications to the Sixth, Seventh, Eighth, Ninth, and Tenth Year Community Development Block Grant Programs.

Pursuant to Resolution 7-83, the "Community Development Block Grant Program Resolution of 1987," effective July 14, 1987, the

Council approved final statement of community development objectives and projected use of funds for the Thirteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Thirteenth Year Community Development Block Grant Program Description, and approved modifications to the final statement of community development objectives and projected use of funds for the Twelfth Year Community Development Block Grant Program.

Pursuant to Resolution 7-288, the "Community Development Block Grant Program Approval and Disapproval Resolution of 1988", effective July 12, 1988, the Council approved the District of Columbia's final statement of community development objectives and projected use of funds for the Fourteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Fourteenth Year Community Development Block Grant Program Description, approved budget modifications for the Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Year Community Development Block Grant Programs, approved modifications of Construction Assistance Program activities included in the Thirteenth Year Final Statement of Community Development Objectives and Projected Use of Funds and the Thirteenth Year Community Development Block Grant Program, and approved a modification to the 13th Year Community Development Block Grant Program Description.

Pursuant to Resolution 8-73, the "Community Development Block Grant Program Approval Resolution of 1989", effective July 11, 1989, the Council approved the final statement of community development objectives and projected use of funds for the Fifteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Fifteenth Year Community Development Block Grant Program Description, and approved reprogramming of funds and budget revisions for the Second, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Year Community Development Block Grant Programs.

Pursuant to Resolution 8-256, the "Community Development Block Grant Program Approval Resolution of 1990", effective July 27, 1990, the Council approved the proposed District of Columbia's Final Statement of Community Development objectives and projected use of funds for the Sixteenth Year Community Development Block Grant Program, authorized the filing of the final statement with the United States Department of Housing and Urban Development, approved the Sixteenth Year Community Development Block Grant Program Description, and approved reprogramming of funds and budget revisions for

the Fifteenth Year Community Development Block Grant Program and modification of the Fifteenth Year Final Statement.

Community Development Block Grant Program Emergency Approval Resolution of 1991. — Pursuant to Resolution 9-91, effective July 19, 1991, the Council approved, on an emergency basis, the proposed District of Columbia's Final Statement of Community Development objectives and projected use of funds; authorized the filing of the final statement; approved the program description, and approved reprogramming of funds, budget revisions, and modification of the final statement.

Comprehensive Housing Affordability Strategy Emergency Approval Resolution of 1991. — Pursuant to Resolution 9-141, effective November 22, 1991, the Council approved,

on an emergency basis, with conditions, the District of Columbia's comprehensive housing affordability strategy.

Community Development Block Grant Program Nineteenth Year Emergency Approval Resolution of 1993. — Pursuant to Resolution 10-120, effective August 6, 1993, the Council approved, on an emergency basis, the District of Columbia's Final Statement of Community Development objectives and projected use of funds for the Nineteenth Year Community Development Block Grant Program, authorized the filing of the final statement with the United States Department of Housing and Urban Development, and approved the Nineteenth Year Community Development Block Grant Program Description.

§ 5-903. Same — Activities permitted.

An approved Community Development Program may include the following activities:

(1) The acquisition of real property (including air rights, water rights, and other interests therein) which is:

(A) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

(B) Appropriate for rehabilitation or conservation activities;

(C) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(D) To be used for the provision of public works, facilities, and improvements; or

(E) To be used for other purposes;

(2) The acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements — including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air right sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities, and fire protection services and facilities;

(3) Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) Clearance, demolition, removal, and rehabilitation of buildings and improvements, including:

(A) Interim assistance to alleviate harmful conditions in which immediate public action is needed;

(B) Financing rehabilitation of privately owned properties through the use of direct loans, loan guarantees, grants, and other means when in support of Community Development Program objectives; and

(C) Demolition and modernization of publicly owned low-rent housing when necessary to protect health, safety, and the public welfare;

(5) Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this chapter;

(7) Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to title, provided that the proceeds of any such disposition shall be expended only for approved Community Development Program activities;

(8) Provision of public services not otherwise available in areas where other activities authorized by this chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities, and if such services are directed toward:

(A) Improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas; and

(B) Coordinating public and private development programs;

(9) Payment of the non-federal share required in connection with the federal grant-in-aid program undertaken as part of the Community Development Program subject to appropriations restrictions if any;

(10) Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

(11) Relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities authorized by this chapter;

(12) Activities necessary:

(A) To develop a comprehensive community development plan; and

(B) To develop a policy-planning-management capacity so that the District of Columbia may more rationally and effectively:

(i) Determine its needs;

(ii) Set long-term goals and short-term objectives;

(iii) Devise programs and activities to meet these goals;

(iv) Evaluate the progress of such programs in accomplishing these goals and objectives; and

(v) Carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are proposed; and

(14) Any activity made eligible for financial assistance by the Housing and Community Development Act of 1974, or any amendment thereto. (1973 Ed., § 5-1003; Dec. 16, 1975, D.C. Law 1-39, § 4, 22 DCR 3443.)

Cross references. — As to relocation services, §§ 5-830 to 5-835.

Section references. — This section is referred to in § 5-904.

Legislative history of Law 1-39. — See note to § 5-901.

References in text. — Title I of the Housing

Act of 1949, referred to in paragraph (10) of this section, is title I of the Act of July 15, 1949, 63 Stat. 414, ch. 338.

The Housing and Community Development Act of 1974, referred to in paragraph (14) of this section, is the Act of August 22, 1974, 88 Stat. 633, Pub. L. 93-383.

§ 5-904. Same — Implementation. § 5 - 902

(a) After the approval of a Community Development Program by the Council pursuant to § 1-2002, the Mayor is authorized to submit to the Secretary of Housing and Urban Development an application, meeting the requirements of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof, for financial assistance to implement said program. In connection therewith, the Mayor is authorized to:

(1) Consent to assume the status of a responsible federal official under the National Environmental Policy Act of 1969;

(2) Consent, on behalf of the District government and himself, to accept the jurisdiction of the federal courts for the purpose of enforcement of his responsibilities as such an official;

(3) Give such other pledges, assurances, and certifications as may be required by the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof; and

(4) Accept grants, gifts, donations, bequests, and services from any source to assist in carrying out any of the purposes of this chapter.

(b) In implementing an approved Community Development Program the Mayor is authorized to perform or conduct any of the activities described in § 5-903 and to do all other things necessary to carry out the intent of such program in accordance with any existing provisions of law not inconsistent herewith. Any power granted to the Mayor or any officer, employee, agency, or instrumentality of the District government by any other law may, in addition to the purposes specified therein, be exercised in furtherance of the carrying out of an approved Community Development Program.

(c) Powers and functions vested in the Mayor by this chapter may be delegated by him to any officer, employee, agency, or instrumentality of the District government by administrative order, and any officer, employee, agency, or instrumentality so designated is authorized to perform the same in accordance with the terms of the delegation.

(d) The Mayor is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out the purposes of this chapter. (1973 Ed., § 5-1004; Dec. 16, 1975, D.C. Law 1-39, § 5, 22 DCR 3448.)

Legislative history of Law 1-39. — See note to § 5-901.

References in text. — The Housing and Community Development Act of 1974, referred to in the first sentence in the introductory paragraph and in paragraph (3) of subsection

(a) of this section, is the Act of August 22, 1974, 88 Stat. 633, Pub. L. 93-383.

The National Environmental Policy Act of 1969, referred to in paragraph (1) of subsection (a) of this section, is the Act of January 1, 1970, 83 Stat. 852, Pub. L. 91-190.

§ 5-905. Acquisition and disposition of real property.

(a) Real property acquired for the purposes of this chapter shall be acquired pursuant to subchapter II of Chapter 13 of Title 16. No such property shall be acquired unless its acquisition be authorized by the Council after notice of public hearing.

(b) Real property may also be acquired through gift, donation, bequest, assignment, or voluntary sale by the owner.

(c)(1) For the purposes of this chapter, the Mayor may dispose of any real property owned by the District of Columbia by negotiation or public or private bid, on such terms and conditions as he deems necessary to accomplish the purposes of the chapter with the consent of the Council, provided that prior to any such disposition there shall be a public hearing on the proposed terms and conditions after at least 30 days public notice. A proposed disposition shall be in accordance with § 9-401(c)-(e). Each proposed disposition shall be submitted to the Council for approval, in whole or in part, by resolution.

(2) The proposed resolution to provide for the disposition of real property pursuant to paragraph (1) of this subsection shall be submitted to the Council for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed disposition of the property, in whole or in part, by resolution within the 90-day period, the proposed resolution shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(3) For real property under the jurisdiction of the Board of Education ("Board") that the Board has determined to be no longer needed for educational purposes and for which jurisdiction has been transferred by the Board to the Mayor for disposal in accordance with the provisions of this chapter, the Mayor shall submit to the Council a report on whether the Mayor intends for the property to be used by another agency of the District government. The report shall be submitted to the Council by the Mayor within 90 days of the transfer of the property to the Mayor by the Board. If the report is not submitted to the Council within the 90-day period, the Mayor shall dispose of the property in accordance with the provisions of this chapter and shall transmit to the Council the resolution required by paragraph (1) of this subsection within 180 days of the date of the transfer of the property to the Mayor by the Board. (1973 Ed., § 5-1005; Dec. 16, 1975, D.C. Law 1-39, § 6, 22 DCR 3450; Mar. 15, 1990, D.C. Law 8-96, § 5, 37 DCR 795; Sept. 11, 1990, D.C. Law 8-158, § 4, 37 DCR 4167.)

Section references. — This section is referred to in §§ 9-401 and 9-402.

Legislative history of Law 1-39. — See note to § 5-901.

Legislative history of Law 8-96. — Law 8-96, the "Disposal of District Owned Surplus Real Property Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-302, which was referred to the Committee on Government Operations. The Bill was adopted

on first and second readings on November 21, 1989, and December 19, 1989, respectively. Approved without the signature of the Mayor on January 18, 1990, it was assigned Act No. 8-148 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-158. — Law 8-158, the "Board of Education Real Property Disposal Act of 1990," was introduced in Council and assigned Bill No. 8-383, which was re-

ferred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Disposal of surplus real property. — Section 2 of D.C. Law 8-96 provided that for the purposes of this act, the term "real property" means land titled in the name of the District of Columbia ("District") or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

Community Development Block Grant Program. — Pursuant to Resolution 7-288, the "Community Development Block Grant Program Approval and Disapproval Resolution of 1988," effective July 12, 1988, the Council approved the District of Columbia's final statement of community development objectives and projected use of funds for the Fourteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Fourteenth Year Community Development Block Grant Program Description, approved budget modifications for the Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Year Community Development Block Grant Programs, approved modifications of Construction Assistance Program activities included in the Thirteenth Year Final Statement of Community Development Objectives and Projected Use of Funds and the Thirteenth Year Community Development Block Grant Program, and approved a modification to the 13th Year Community Development Block Grant Program Description.

Center Leg Freeway Air Rights Development Approval Resolution of 1990. — Pursuant to Resolution 8-333, effective January 11, 1991, the Council approved the proposal of the Washington Development Group, Inc., to develop the air space above the Center Leg Freeway (I-395), bounded by Mass. Ave., E, 2nd, and 3rd Street, N.W.

Proposal to Acquire Land Underlying the Whitelaw Hotel Emergency Approval Resolution of 1991. — Pursuant to Resolution 9-143, effective November 22, 1991, the Council approved, on an emergency basis, a proposal to acquire and leaseback a parcel of land pursuant to the District of Columbia Land Acquisition for Housing Development Opportunities ("LAHDO") Program.

Unsolicited Proposal to Develop a Portion of Land Located at Benning Road Between Hanna Place and H Street, S.E. Emergency Approval Resolution of 1992. — Pursuant to Resolution 9-300, effective July 7, 1992, the Council approved, on an emergency basis, acceptance of an unsolicited proposal to acquire and develop a portion of land located at Benning Road Between Hanna Place and H Street, S.E.

Proposal to Acquire Land Underlying the Savannah Park Apartments Emergency Approval Resolution of 1992. — Pursuant to Resolution 9-306, effective July 24, 1992, the Council approved, on an emergency basis, a proposal to acquire land underlying the Savannah Park Apartments.

Unsolicited Proposal to Acquire and Develop Parcel 23-A in the 14th Street Urban Renewal Area Emergency Approval Resolution of 1993. — Pursuant to Resolution 10-164, effective October 22, 1993, the Council approved, on an emergency basis, a development proposal to develop Parcel 23-A located at 1333 Belmont Street, N.W. and legally described as Lot 120 in Square 2868.

§ 5-906. Rehabilitation of private property; loans and grants; insurance; determination of public use.

(a) The Mayor is hereby authorized to establish a Rehabilitation Loan and Grant Fund and to make or contract to make publicly-financed low-interest loans and grants to owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to § 5-902.

(b) The Mayor is further authorized to establish a Rehabilitations Loan Insurance Fund and to insure or contract to insure privately-financed loans to owners of property for the rehabilitation and improvement of such property in

accordance with a Community Development Program approved pursuant to § 5-902.

(c) Any and all publicly-financed rehabilitation loans and grants made by the Mayor, and any and all insurance commitments made by the Mayor in connection with privately-financed rehabilitation loans, and any and all money used or expended by the Mayor in connection with said loans or insurance commitments pursuant to the hereinabove described authority, and any and all acts performed by the Mayor in connection with any powers granted pursuant to this section, are hereby declared to be needed, contracted for, expended, or exercised for a public use. (1973 Ed., § 5-1006; Dec. 16, 1975, D.C. Law 1-39, § 7, 22 DCR 3450.)

Legislative history of Law 1-39. — See note to § 5-901.

§ 5-907. Construction; severability.

(a) To the extent that any provisions of this chapter are inconsistent with the provisions of any other laws within the jurisdiction of the Council, the provisions of this chapter shall prevail and shall be deemed to supersede the provisions of such laws.

(b) If any provisions of this chapter be held invalid, the remainder of the chapter shall not be impaired thereby, but shall continue in full force and effect. (1973 Ed., § 5-1007; Dec. 16, 1975, D.C. Law 1-39, § 8, 22 DCR 3451.)

Legislative history of Law 1-39. — See note to § 5-901.

CHAPTER 10. HISTORIC LANDMARK AND
HISTORIC DISTRICT PROTECTION.

Subchapter I. General Provisions.

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- 5-1011. Insanitary and unsafe buildings.
- 5-1012. Administrative procedures.
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Sec.

- 5-1001. Declaration and purposes.
- 5-1002. Definitions.
- 5-1003. Historic Preservation Review Board.
- 5-1004. Demolitions.
- 5-1005. Alterations.
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Subchapter I. General Provisions.

§ 5-1001. Declaration and purposes.

(a) It is hereby declared as a matter of public policy that the protection, enhancement, and perpetuation of properties of historical, cultural, and esthetic merit are in the interests of the health, prosperity, and welfare of the people of the District of Columbia. Therefore, this subchapter is intended to:

(1) Effect and accomplish the protection, enhancement, and perpetuation of improvements and landscape features of landmarks and districts which represent distinctive elements of the city's cultural, social, economic, political, and architectural history;

(2) Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;

(3) Foster civic pride in the accomplishments of the past;

(4) Protect and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and

(5) Promote the use of landmarks and historic districts for the education, pleasure, and welfare of the people of the District of Columbia.

(b) It is further declared that the purposes of this subchapter are:

(1) With respect to properties in historic districts:

(A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;

(B) To assure that alterations of existing structures are compatible with the character of the historic district; and

(C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district;

(2) With respect to historic landmarks:

(A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and

(B) To encourage the restoration of historic landmarks. (1973 Ed., § 5-821; Mar. 3, 1979, D.C. Law 2-144, § 2, 25 DCR 6939.)

Section references. — This section is referred to in §§ 5-1002 and 5-1003.

Legislative history of Law 2-144. — Law 2-144, the "Historic Landmark and Historic District Protection Act of 1978," was introduced in Council and assigned Bill No. 2-367, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on October 31, 1978, November 14, 1978 and November 28, 1978, respectively. Signed by the Mayor on December 27, 1978, it was assigned Act No. 2-318 and transmitted to both Houses of Congress for its review.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter", where applicable, in this section.

Federal instrumentality cannot be required to comply with this subchapter before obtaining demolition permit as a step in implementing the federal program established by the Pennsylvania Avenue Development Corporation Act of 1972 (40 U.S.C. § 871

et seq.). *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527 (D.C. Cir. 1980).

Cited in 900 G St. Assocs. v. Department of Hous. & Community Dev., App. D.C., 430 A.2d 1387 (1981); Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev., App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981); Committee for Washington's Riverfront Parks v. Thompson, App. D.C., 451 A.2d 1177 (1982); Weinberg v. Barry, 634 F. Supp. 86 (D.D.C. 1986); Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd., App. D.C., 520 A.2d 270 (1987); Butler v. District of Columbia Dep't of Pub. Works, 115 WLR 949 (Super. Ct.); 1827 M St., Inc. v. District of Columbia, App. D.C., 537 A.2d 1078 (1988); Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 571 A.2d 195 (1990); Daro Realty, Inc. v. Dist. of Columbia Zoning Comm'n, App. D.C., 581 A.2d 295 (1990); Tyler v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 606 A.2d 1362 (1992).

§ 5-1002. Definitions.

For the purposes of this subchapter the term:

(1) "Alter" or "alteration" means a change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required; except, that "alter" or "alteration" also means a change in any interior space which has been specifically designated as an historic landmark.

(2) "Commission of Fine Arts" means the United States Commission of Fine Arts established pursuant to the Act of May 17, 1910 (40 U.S.C. § 104).

(3) "Demolish" or "demolition" means the razing or destruction, entirely or in significant part, of a building or structure and includes the removal or destruction of any facade of a building or structure.

(4) "Design" means exterior architectural features including height, appearance, texture, color, and nature of materials.

(5) "Historic district" means an historic district:

(A) Listed in the National Register of Historic Places as of the effective date of this subchapter;

(B) Nominated to the National Register by the State Historic Preservation Officer for the District of Columbia; or

(C) Which the State Historic Preservation Officer for the District of Columbia has issued a written determination to nominate to the National Register after a public hearing before the Historic Preservation Review Board.

(6) "Historic landmark" means a building, structure, object, or feature, and its site, or a site:

(A) Listed in the National Register of Historic Places as of the effective date of this subchapter; or

(B) Listed in the District of Columbia's inventory of historic sites, or for which application for such listing is pending with the Historic Preservation Review Board; provided, that the Review Board will determine within 90 days of receipt of an application pursuant to § 5-1004, § 5-1005, § 5-1006, § 5-1007, or § 5-1008 whether to list such property, and any property not so listed will not be considered an historic landmark within the terms of this subchapter.

(7) "Historic Preservation Review Board" or "Review Board" means the Board designated pursuant to § 5-1003 and pursuant to regulations promulgated by the United States Secretary of the Interior under the Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).

(8) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(9) "National Register of Historic Places" or "National Register" means that national record of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture established pursuant to the Historic Preservation Act of 1966 (16 U.S.C. § 470a).

(10) "Necessary in the public interest" means consistent with the purposes of this subchapter as set forth in § 5-1001(b) or necessary to allow the construction of a project of special merit.

(11) "Special merit" means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.

(12) "State Historic Preservation Officer" means the person designated by the Mayor to administer the National Register Program within the District of Columbia established pursuant to the Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).

(13) "Subdivide" or "subdivision" means the division or assembly of land into 1 or more lots of record, including the division of any lot of record into 2 or more theoretical building sites as provided by the Zoning Regulations of the District of Columbia (11 DCMR 2516 et seq.).

(14) "Unreasonable economic hardship" means that failure to issue a permit would amount to a taking of the owner's property without just compensation or, in the case of a low-income owner(s) as determined by the Mayor, failure to issue a permit would place an onerous and excessive financial burden upon such owner(s). (1973 Ed., § 5-822; Mar. 3, 1979, D.C. Law 2-144, § 3, 25 DCR 6939; Mar. 8, 1991, D.C. Law 8-232, § 2, 38 DCR 259.)

Legislative history of Law 2-144. — See note to § 5-1001.

Legislative history of Law 8-232. — Law 8-232, the "Historic Landmark and Historic District Protection Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-274, which was referred to the Committee on Consumer and Regulatory Affairs. The

Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-315 and transmitted to both Houses of Congress for its review.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Inventory of historic sites. — Because the description in the inventory of historic sites of a vista describes a view that does not exist this chapter does not apply to the construction of the international trade center. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

Interim burden imposed by automatic designation of landmark status, pursuant to paragraph (6)(B), upon the filing of an application for designation as an historic landmark does not rise to constitutional proportions and does not constitute an unconstitutional taking. *Weinberg v. Barry*, 604 F. Supp. 390 (D.D.C. 1985).

Paragraph (11) is not unconstitutionally vague. — The objective factors of design which must be considered by the Mayor's agent in weighing a claim of special merit based on "exemplary architecture" give substance to that phrase and render it sufficiently concrete to withstand a claim of unconstitutional vagueness. *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710 (1981), cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981).

Special merit. — Factors common to all projects are not special merits. *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990).

Parking must be considered with every downtown project, and does not ordinarily qualify as an amenity of special merit. *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990).

Although some special merit projects and at-

tendant amenities may fall within the scope of the Uniform Conservation Easement Act, covenants not associated with nature-related or culture-related values do not. *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990).

"Subdivision" construed. — The division of several property lots and their subsequent combination into two lots of record did not constitute a subdivision within the meaning of this chapter. *Acheson v. Sheaffer*, App. D.C., 520 A.2d 318 (1987).

Effect of application by lessee rather than owner. — Where the regulations require that application be made in name of lawful owner, the application by a lessee did not trigger the 90-day clause in paragraph (6)(B) of this section. *Weinberg v. Barry*, 634 F. Supp. 86 (D.D.C. 1986).

Evidence sufficient to support finding of failure to prove special merit of project. — See *MB Assocs. v. D.C. Dep't of Licenses, Investigation & Inspection*, App. D.C., 456 A.2d 344 (1982).

Review of designation of historic landmark. — The designation of an historic landmark in 1985 by the review board composed of accountable public officials will not be set aside because of the failure of a predecessor interim private citizen review board in 1981 to abide by the 90-day rule in paragraph (6)(B) of this section. *Weinberg v. Barry*, 634 F. Supp. 86 (D.D.C. 1986).

Cited in 900 G St. Assocs. v. Department of Hous. & Community Dev., App. D.C., 430 A.2d 1387 (1981); *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *Butler v. District of Columbia Dep't of Pub. Works*, 115 WLR 949 (Super. Ct.).

§ 5-1003. Historic Preservation Review Board.

(a) The Mayor is authorized to establish an Historic Preservation Review Board whose members shall be confirmed by the Council of the District of Columbia. The Review Board shall be constituted and its members qualified so as to meet the requirements of a State Review Board under regulations issued by the Secretary of the Interior pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.). Any body which functions as the District of Columbia State Review Board pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.) as of the effective date of this subchapter, shall function as the Review Board pursuant to this section until a Review Board is established and its members nominated by the Mayor and confirmed by the Council of the District of Columbia pursuant to this section.

(b) Subject to the requirements of subsection (a) of this section, all appointments to the Historic Preservation Review Board shall be made with a view toward having its membership represent to the greatest practicable extent the composition of the adult population of the District of Columbia with regard to race, sex, geographic distribution and other demographic characteristics.

(c) The Review Board shall:

(1) Advise the Mayor on the compatibility with the purposes of this subchapter (as set forth in § 5-1001) of the applications referred to it by the Mayor pursuant to §§ 5-1004 through 5-1008;

(2) Perform the functions and duties of a State Review Board as set forth in regulations issued pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.);

(3) Designate and maintain a current inventory of historic landmarks and historic districts in the District of Columbia and, in connection therewith, adopt and publish appropriate procedures; and

(4) Perform such other functions and duties relating to the protection, preservation, enhancement, and perpetuation of the historic, architectural, cultural and aesthetic heritage of the District of Columbia as the Mayor may from time to time assign. (1973 Ed., § 5-823; Mar. 3, 1979, D.C. Law 2-144, § 4, 25 DCR 6939.)

Section references. — This section is referred to in §§ 5-1002 and 7-422.

Legislative history of Law 2-144. — See note to § 5-1001.

Historic Preservation Review Board established. — See Mayor's Orders 83-119, May 6, 1983, and 88-213, September 23, 1988, for the functions, composition, terms, and compensation for members of the Board.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

This section provides for discretionary duplicative review and in so doing poses no constitutional problem. *Don't Tear It Down, Inc. v. D.C. Dep't of Hous. & Community Dev.*, App. D.C., 428 A.2d 369 (1981).

Hearings. — In order to superimpose the substantial evidence requirement upon the Historic Preservation Review Board, the court must be able to determine that the Board's proceedings are tantamount to a trial-type hearing or adjudication — in other words, a contested case, in which there is a right to a trial-type hearing explicitly granted in the agency's organic act or where such a hearing is required by the United States Constitution. This section does not specifically require a trial-type hearing as to any affected person or other interested party, and there are constitutionally adequate procedures already available to an af-

fectured property owner who is individually aggrieved at some later time after the Board has designated the landmark. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Opinion of Advisory Neighborhood Commission. — Where an Historic Preservation Review Board's written decision does not comply with the specific statutory mandate of § 1-261 requiring the Board to give "great weight" to the opinion or position of an Advisory Neighborhood Commission (ANC), violation of this requirement is to be remedied with a remand of the case to the agency, so that it can properly consider the ANC's position and supplement its final decision appropriately. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Cited in *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981); *A & G Ltd. Partnership v. Joint Comm. On Landmarks of Nat'l Capital*, App. D.C., 449 A.2d 291 (1982); *Weinberg v. Barry*, 634 F. Supp. 86 (D.D.C. 1986); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *United Nations, Inc. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 554 A.2d 313 (1989); *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App D.C., 571 A.2d 195 (1990).

§ 5-1004. Demolitions.

(a) Before the Mayor may issue a permit to demolish an historic landmark or a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding required by subsection (e) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Code, § 5-1101 et seq.). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section; provided, that the Mayor may make such finding without a public hearing in the case of a building or structure in an historic district or on the site of an historic landmark if the Review Board has advised in its recommendation that the building or structure does not contribute to the historic district or the historic landmark.

(d) If the Review Board recommends against granting the permit, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application.

(g)(1) In any instance where there is a claim of unreasonable economic hardship, the owner shall submit, by affidavit, to the Mayor at least 20 days prior to the public hearing, at least the following information:

(A) For all property:

(i) The amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;

(ii) The assessed value of the land and improvements thereon according to the 2 most recent assessments;

(iii) Real estate taxes for the previous 2 years;

(iv) Annual debt service, if any, for the previous 2 years;

(v) All appraisals obtained within the previous 2 years by the owner or applicant in connection with his purchase, financing or ownership of the property;

(vi) Any listing of the property for sale or rent, price asked, and offers received, if any; and

(vii) Any consideration by the owner as to profitable adaptive uses for the property; and

(B) For income-producing property:

(i) Annual gross income from the property for the previous 2 years;
(ii) Itemized operating and maintenance expenses for the previous 2 years;

(iii) Annual cash flow, if any, for the previous 2 years.

(2) The Mayor may require that an applicant furnish such additional information as the Mayor believes is relevant to his determination of unreasonable economic hardship and may provide in appropriate instances that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

(h) In those cases in which the Mayor finds that the demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless a permit for new construction is issued simultaneously under § 5-1007 and the owner demonstrates the ability to complete the project. (1973 Ed., § 5-824; Mar. 3, 1979, D.C. Law 2-144, § 5, 25 DCR 6939.)

Section references. — This section is referred to in §§ 5-1002, 5-1003, 5-1005, 5-1006, 5-1008, and 5-1010.

Legislative history of Law 2-144. — See note to § 5-1001.

Three circumstances for issuance of demolition permit for historic district buildings. — A demolition permit may be issued where the Mayor's agent finds: (1) A building located in an historic district does not contribute to the character of the district; (2) demolition is necessary to allow the construction of a project of special merit; or (3) failure to issue the demolition permit will result in a taking of the owner's property without just compensation. *Don't Tear It Down, Inc. v. D.C. Dep't of Hous. & Community Dev.*, App. D.C., 428 A.2d 369 (1981).

Federal instrumentality cannot be required to comply with this subchapter before obtaining demolition permit as a step in implementing the federal program established by the Pennsylvania Avenue Development Corporation Act of 1972 (40 U.S.C. § 871 et seq.). *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527 (D.C. Cir. 1980).

Proper standard for reviewing permit application compels a balancing of the historical values to be lost by demolition against the special merit of the proposed project. *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981).

Considerations for determining neces-

sity. — Reasonableness must be imputed into the "necessary" standard, and at the hearing on each "special merit" permit, factors including but not limited to cost, delay, and technical feasibility become "proper considerations for determining what is necessary." *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981).

The mandate of § 43-501, that utility service and charges be just and reasonable, is a valid consideration in determining whether a permit to demolish an historic landmark owned by a utility is "necessary" under subsection (e) of this section. *Don't Tear It Down, Inc. v. D.C. Dep't of Hous. & Community Dev.*, App. D.C., 428 A.2d 369 (1981).

Burden of proof. — A petitioner has the burden of proof in a hearing to establish that no other reasonable economic use for a building exists. *900 G St. Assocs. v. Department of Hous. & Community Dev.*, App. D.C., 430 A.2d 1387 (1981); *MB Assocs. v. D.C. Dep't of Licenses, Investigation & Inspection*, App. D.C., 456 A.2d 344 (1982).

Developer must show that all reasonable alternatives were considered, but that does not mean that a developer may select the least expensive alternative and summarily reject those which are more costly. *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981).

Measuring profitability of restricted

property. — The profitability to an owner of restricted property is to be measured by whether any reasonable economic use exists for the property. 900 G St. Assocs. v. Department of Hous. & Community Dev., App. D.C., 430 A.2d 1387 (1981).

Effect of reasonable alternative economic use for restricted property. — If there is a reasonable alternative economic use for a property after the imposition of a restriction on that property, there is no taking, and hence no unreasonable economic hardship to the owners, no matter how diminished the property may be in cash value and no matter if higher or more beneficial uses of the property have been proscribed. 900 G St. Assocs. v. Department of Hous. & Community Dev., App. D.C., 430 A.2d 1387 (1981); MB Assocs. v. D.C. Dep't of Licenses, Investigation & Inspection, App. D.C., 456 A.2d 344 (1982).

Demolition necessary where retention of landmark is economically oppressive. — Demolition is necessary in order to construct a project of special merit whenever retention of the landmark on its original site becomes economically oppressive. Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev., App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981).

Precise statement of basis for decision required. — The Mayor's agent must state with a high degree of precision which historical values associated with a particular landmark of historic district were considered with respect to a permit application and whether these historical considerations outweigh, or are outweighed by, the merits of that application. Citizens Comm. to Save Historic Rhodes Tavern v.

District of Columbia Dep't of Hous. & Community Dev., App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981).

The Mayor's agent's determination that demolition was necessary required findings in some greater detail as to the amenities that were said to be of special merit. Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 571 A.2d 195 (1990).

Real party in interest. — The Advisory Neighborhood Commission (ANC) is the real party in interest, with standing to complain about lack of adequate notice from the Historic Preservation Review Board; the Mayor would be the real party in interest to complain about the untimely receipt of an ANC resolution. Dwyer v. District of Columbia, 120 WLR 2609 (Super. Ct. 1992).

Judicial review. — The court had no authority to vacate a decision of the Historic Preservation Review Board where there was a technical violation of the Advisory Neighborhood Commission (ANC) statute, § 1-261 et seq., not by the Board but exclusively by the ANC itself. Dwyer v. District of Columbia, 120 WLR 2609 (Super. Ct. 1992).

Cited in Grano v. Barry, 733 F.2d 164 (D.C. Cir. 1984); Citizens Comm. v. Barry, 112 WLR 1653 (Super. Ct.); Weinberg v. Barry, 604 F. Supp. 390 (D.D.C. 1985); Weinberg v. Barry, 634 F. Supp. 86 (D.D.C. 1986); Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd., App. D.C., 520 A.2d 270 (1987); Tyler v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 606 A.2d 1362 (1992).

§ 5-1005. Alterations.

(a) Before the Mayor may issue a permit to alter the exterior or site of an historic landmark or of a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding required by subsection (f) of this section, the Mayor may refer the permit application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Code, § 5-1101 et seq.) or the Shipstead-Luce Act (D.C. Code, § 5-410). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral pursuant to subsection (b) of this section, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) In cases in which a claim of unreasonable economic hardship or special merit is made and in any other case he deems appropriate or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) No permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner.

(g) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any instance where there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of § 5-1004. (1973 Ed., § 5-825; Mar. 3, 1979, D.C. Law 2-144, § 6, 25 DCR 6939; May 10, 1989, D.C. Law 7-231, § 20, 36 DCR 492.)

Section references. — This section is referred to in §§ 5-1002, 5-1003, 5-1008, and 5-1010.

Legislative history of Law 2-144. — See note to § 5-1001.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Vista as historic landmark. — An excavation cannot alter a vista, which is the protected historic landmark. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

Suicide barriers on historic bridges. — The basic legislative purpose of the Historic Protection Act was to provide a comprehensive system of protection for historic sites, but the entire act would be rendered a nullity as to historic bridges if its protections could be evaded through the simple expedient of not applying for a building permit before altering those bridges. *Butler v. District of Columbia Dep't of Pub. Works*, 115 WLR 949 (Super. Ct.).

Cited in *Weinberg v. Barry*, 604 F. Supp. 390 (D.D.C. 1985); *Weinberg v. Barry*, 634 F. Supp. 86 (D.D.C. 1986); *National Trust for Historic Preservation of United States v. Dole*, 828 F.2d 776 (D.C. Cir. 1987); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

§ 5-1006. Subdivisions.

(a) Before the Mayor may admit to record any subdivision of an historic landmark or of a property in an historic district, the Mayor shall review the application for admission to record in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding on the application for admission to record required by subsection (e) of this section, the Mayor shall refer the application to the Historic Preservation Review Board for its recommendation.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section; provided, that the Mayor may make such finding without a public hearing in the case of a subdivision of a lot in an historic district if the Review Board advises him that such subdivision is consistent with the purposes of this subchapter.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No subdivision subject to this subchapter shall be admitted to record unless the Mayor finds that admission to record is necessary in the public interest or that a failure to do so will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any case in which there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of § 5-1004.

(g) In those cases in which the Mayor finds that the subdivision is necessary to allow the construction of a project of special merit, no subdivision permit shall be issued unless a permit for new construction is issued simultaneously under § 5-1007 and the owner demonstrates the ability to complete the project. (1973 Ed., § 5-826; Mar. 3, 1979, D.C. Law 2-144, § 7, 25 DCR 6939.)

Section references. — This section is referred to in §§ 5-1002, 5-1003, and 5-1008.

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter", where applicable, in this section.

Cited in *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *Acheson v. Sheaffer*, App. D.C., 520 A.2d 318 (1987).

§ 5-1007. New construction.

(a) Before the Mayor may issue a permit to construct a building or structure in an historic district or on the site of an historic landmark, the Mayor shall review the permit application in accordance with this section and shall place notice of the application in the District of Columbia Register.

(b) Prior to making the finding on the permit application required by subsection (f) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Code, § 5-1101 et seq.) or the Shipstead-Luce Act (D.C. Code, § 5-410). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) In any case where the Mayor deems appropriate, or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) The permit shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the

design of the building and the character of the historic district or historic landmark are incompatible; provided, that in any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor may deny a construction permit entirely where he finds that any additional construction will be incompatible with the character of the historic district or historic landmark. (1973 Ed., § 5-827; Mar. 3, 1979, D.C. Law 2-144, § 8, 25 DCR 6939.)

Section references. — This section is referred to in §§ 5-1002, 5-1003, 5-1004, 5-1006, 5-1008, and 5-1010.

Legislative history of Law 2-144. — See note to § 5-1001.

Purpose of section. — In drafting this legislation, the City Council chose to separate the treatment of permit applications for new construction from those which seek to demolish, alter, or modify existing structures within an historic area. *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A.2d 417 (1983).

Rationale for distinction between new construction and alteration of existing structures. — The distinction drawn between new construction and alteration of existing structures is mirrored in the presumption of issuance which attaches to applications for new construction. Presumably, demolition of a building will permanently alter a portion of the very reason for which an area has been deemed an historic district; construction of a new building, so long as an adequate design review process is established, does not pose the

same dangers. *Dupont Circle Citizens Ass'n v. Barry*, App. D.C., 455 A.2d 417 (1983).

Consideration accorded recommendations of Commission of Fine Arts. — Neither the Old Georgetown Act nor the Historic Protection Act explicitly requires that the Mayor accord special weight to the expert recommendation of the Commission of Fine Arts. Nevertheless, in light of the Commission's expertise and the statutory mandate that the Mayor consider its recommendation, the Mayor's agent must demonstrate that the Commission's recommendation and concerns were considered in order to allow meaningful judicial review and to ensure that statutory requirements have been met. *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

Cited in *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987); *Acheson v. Sheaffer*, App. D.C., 520 A.2d 318 (1987); *Committee of 100 v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990).

§ 5-1008. Application for preliminary review.

An applicant may apply to the Mayor for a preliminary review of a project for compliance with the provisions of this subchapter relating to new construction, and to any demolition, alteration, or subdivision necessary for such new construction. Upon the provision of such information and upon compliance with such other conditions as the Mayor may require, such application shall be considered by the Mayor without the necessity of the applicant completing other permit requirements not necessary for a finding under this subchapter. Where an application for a preliminary review is received pursuant to this section, the Mayor will determine, in accordance with the procedures and requirements specified in §§ 5-1004, 5-1005, 5-1006, and/or 5-1007, as applicable, whether to issue a preliminary finding of compliance with this subchapter; provided, that no permit shall be granted except in accordance with all other permit requirements, and after final review by the Mayor under this subchapter; provided further, that where the final review shows that the project is not consistent with the preliminary review, the application will again be processed in accordance with the procedures and requirements of

§§ 5-1004, 5-1005, 5-1006, and/or 5-1007, as applicable. (1973 Ed., § 5-828; Mar. 3, 1979, D.C. Law 2-144, § 9, 25 DCR 6939.)

Section references. — This section is referred to in §§ 5-1002 and 5-1003.

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Cited in *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987).

§ 5-1009. Regulations.

The Mayor is authorized to issue such regulations as may be necessary or appropriate to carry out his duties under this subchapter. Such regulations shall be issued to take effect within 60 days from the effective date of this subchapter. (1973 Ed., § 5-829; Mar. 3, 1979, D.C. Law 2-144, § 10, 25 DCR 6939.)

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 5-1010. Penalties; remedies.

(a) *Criminal penalty.* — Any person who willfully violates any provision of this subchapter or of any regulation issued under the authority of this subchapter shall, upon conviction, be fined not more than \$1,000 or be imprisoned for not more than 90 days, or both. All prosecutions for violations of this subchapter or of any regulations issued under the authority of this subchapter shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants.

(b) *Civil remedy.* — Any person who demolishes, alters or constructs a building or structure in violation of § 5-1004, § 5-1005, or § 5-1007 shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Corporation Counsel. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (1973 Ed., § 5-830; Mar. 3, 1979, D.C. Law 2-144, § 11, 25 DCR 6939; Oct. 5, 1985, D.C. Law 6-42, § 412, 32 DCR 4450.)

Legislative history of Law 2-144. — See note to § 5-1001.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respec-

tively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both houses of Congress for its review.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 5-1011. Insanitary and unsafe buildings.

(a) Nothing in this subchapter shall interfere with the authority of the Board for the Condemnation of Insanitary Buildings to put a building or structure into sanitary condition or to demolish it pursuant to the provisions of the Act of May 1, 1906 (D.C. Code, §§ 5-701 through 5-719); except, that no permit for the demolition of an historic landmark or building or structure in an historic district shall be issued to the owner except in accordance with the provisions of this subchapter.

(b) Nothing in this subchapter shall affect the authority of the District of Columbia to secure or remove an unsafe building or structure pursuant to the Act of March 1, 1899 (D.C. Code, §§ 5-601 through 5-608). (1973 Ed., § 5-831; Mar. 3, 1979, D.C. Law 2-144, § 12, 25 DCR 6939.)

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 5-1012. Administrative procedures.

(a) In any case of demolition, alteration, or new construction in which a hearing was held, the Mayor's decision on such application shall not become final until 15 days after issuance.

(b) All proceedings pursuant to this subchapter shall be conducted in accordance with the applicable provisions to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.). Any final order of the Mayor under this subchapter shall be reviewable in the District of Columbia Court of Appeals. (1973 Ed., § 5-832; Mar. 3, 1979, D.C. Law 2-144, § 13, 25 DCR 6939.)

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Applicability to designation of districts. — In order to superimpose the substantial evidence requirement upon the Historic Preservation Review Board, the court must be able to

determine that the Board's proceedings are tantamount to a trial-type hearing or adjudication — in other words, a contested case, in which there is a right to a trial-type hearing explicitly granted in the agency's organic act or where such a hearing is required by the United States Constitution. Section 5-1003, which controls the nomination of historic district, does not specifically require a trial-type hearing as to any affected person or other interested party, and there are constitutionally adequate procedures already available to an

affected property owner who is individually aggrieved at some later time after the Board has designated the landmark. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Cited in 900 G St. *Assocs. v. Department of Hous. & Community Dev.*, App. D.C., 430 A.2d 1387 (1981); *Citizens Comm. to Save Historic*

Rhodes Tavern v. District of Columbia Dep't of Hous. & Community Dev., App. D.C., 432 A.2d 710, cert. denied, 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590 (1981); *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, App. D.C., 520 A.2d 270 (1987).

§ 5-1013. Annual report.

At the end of each 12-month period following the effective date of this subchapter, the Mayor shall transmit to the Council a detailed report on the implementation of this subchapter, including, but not limited to:

- (1) The number of applications for alterations in historic districts;
- (2) The number of such applications granted without hearing as pertaining to buildings in historic districts that do not contribute to the historic district;
- (3) The number of such applications granted after hearing as in the public interest;
- (4) The number of applications granted after hearing on the basis of economic hardship;
- (5) The number of such applications which are denied. For each denial the report should specify:
 - (A) The nature of the requested alteration;
 - (B) Why it was found to not be in the public interest; and
 - (C) Whether economic hardship was claimed and if so, why it was found not to exist. (1973 Ed., § 5-833; Mar. 3, 1979, D.C. Law 2-144, § 14, 25 DCR 6939.)

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 5-1014. Severability.

The sections of this subchapter are hereby declared to be severable. In the event that any section of this subchapter or portion thereof is held void or unenforceable for whatever reason, all remaining provisions shall remain in full force and effect. (1973 Ed., § 5-834; Mar. 3, 1979, D.C. Law 2-144, § 16, 25 DCR 6939.)

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 5-1015. Effective date.

This subchapter shall become effective as provided for acts of the Council of the District of Columbia in § 1-233(c)(1). Notwithstanding any other provision of law, upon the effective date of this subchapter, all pending applications for permits shall be subject to this subchapter and no outstanding permits shall be renewed or reissued except in accordance with the provisions of this subchapter. (1973 Ed., § 5-835; Mar. 3, 1979, D.C. Law 2-144, § 17, 25 DCR 6939.)

Legislative history of Law 2-144. — See note to § 5-1001.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 10 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Subchapter II. Historic Rhodes Tavern.

§ 5-1021. Declaration of policy.

It is by the People declared the public policy of the District of Columbia to support, advocate, and promote the preservation, restoration, and reuse of the Historic Rhodes Tavern on its present site at the northeast corner of 15th and F Streets, Northwest in the District of Columbia. The objectives of this policy are: To preserve, restore, and reuse Rhodes Tavern on its present site; to protect the District of Columbia's historic, political, cultural, social, economic, and architectural heritage as reflected and embodied in Rhodes Tavern, which is listed on the National Register of Historic Places and which is a Category II Landmark on the District of Columbia's Inventory of Historic Sites; to foster civic pride in the noble accomplishments of the past, including the efforts of citizens who met at Rhodes Tavern, the City of Washington's first town hall, in 1801 to debate and draft petitions in the continuing struggle for self-government and representation in Congress; to recognize the role of Rhodes Tavern as a polling place in the first municipal elections in the City of Washington on June 7, 1802; to commemorate other meetings held at Rhodes Tavern which resulted in the establishment of the City of Washington's first public school, theatre, and market place; to enhance the District of Columbia's attraction to tourists and visitors and the support and stimulus to the economy thereby provided; to promote the use of Rhodes Tavern for the education, pleasure, and welfare of the people of the District of Columbia; and to establish a central landmark for the District of Columbia that will symbolize its local and national historic origins, continuity and identity. (Mar. 15, 1984, D.C. Law 5-69, § 2, 31 DCR 445.)

Section references. — This section is referred to in §§ 5-1022 and 5-1023.

Legislative history of Law 5-69. — Law 5-69, the "District of Columbia Historic Rhodes Tavern Preservation Initiative of 1982," was submitted to the electors of the District of Columbia on November 8, 1983, as Initiative No.

11. The results of the voting, certified by the Board of Elections and Ethics on November 21, 1983, were 22,977 for the Initiative and 15,420 against the Initiative. It was transmitted to Congress on January 24, 1984, published in the D.C. Register on February 3, 1984, and became law on March 15, 1984.

Injunction granted to prevent demolition. — Preliminary injunction was granted to prevent issuance of permit that would allow demolition of Rhodes Tavern pending a full hearing on the merits of whether the building can be razed by its owner. *Citizens Comm. v. Barry*, 112 WLR 1653 (Super. Ct.).

Standing to enforce Rhodes Tavern Act. — Plaintiffs, Citizens Committee to Save His-

toric Rhodes Tavern and individual citizens, have standing to sue and a private cause of action to enforce the District of Columbia Historic Rhodes Tavern Preservation Initiative of 1982. *Citizens Comm. v. Barry*, 112 WLR 1653 (Super. Ct.).

Cited in *Grano v. Barry*, 783 F.2d 1104 (D.C. Cir. 1986).

§ 5-1022. Establishment of Advisory Board.

The Mayor, with the advice and consent of the Council, shall appoint an uncompensated Historic Rhodes Tavern Advisory Board of 7 residents of the District of Columbia. The Board shall be composed of 2 historians with expertise in local District of Columbia history, an architect, an architectural historian, an attorney, an economist with expertise in the field of real estate development, and a lay person. Board members shall be appointed to 2-year terms. The Board shall continue in existence until the Mayor and the Council determine that the objectives of the policy declared in § 5-1021 have been fully attained, and that the Board has fulfilled its duties as outlined in § 5-1023. (Mar. 15, 1984, D.C. Law 5-69, § 3, 31 DCR 445.)

Legislative history of Law 5-69. — See note to § 5-1021.

§ 5-1023. Duties of Advisory Board.

The Board shall:

(1) Negotiate with the owners of the Rhodes Tavern to determine whether said owners will enter into an agreement to fulfill the objectives declared in § 5-1021. If the Board determines that such an agreement cannot be achieved, then the Board will prepare a report to the Mayor and the Council outlining actions that should be taken by the District of Columbia government to implement the policy declared in § 5-1021;

(2) Prepare reports and information for the Mayor and Council concerning:

(A) How Rhodes Tavern can be preserved, restored, reused, and integrated into any proposed development;

(B) A complete documented history of Rhodes Tavern; and

(C) Any other matter which the Board deems appropriate;

(3) Prepare an application nominating Rhodes Tavern as a Category I Landmark on The District of Columbia's Inventory of Historic Sites; and

(4) Undertake any other activities which it determines are appropriate to achieve the objectives of the policy declared in § 5-1021. (Mar. 15, 1984, D.C. Law 5-69, § 4, 31 DCR 445.)

Section references. — This section is referred to in § 5-1022.

Legislative history of Law 5-69. — See note to § 5-1021.

Citizens Committee has standing to enforce Rhodes Tavern Act. — Plaintiffs, Citizens Committee to Save Historic Rhodes Tavern and individual citizens, have standing to

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sue and a private cause of action to enforce the Preservation Initiative of 1982. Citizens
District of Columbia Historic Rhodes Tavern Comm. v. Barry, 112 WLR 1653 (Super. Ct.).

CHAPTER 11. PRESERVATION OF HISTORIC PLACES AND AREAS IN THE GEORGETOWN AREA.

Sec.

- 5-1101. "Old Georgetown" district created.
- 5-1102. Restrictions on alteration of buildings.
- 5-1103. Board of Review established.
- 5-1104. Survey of Old Georgetown district authorized.

Sec.

- 5-1105. Construction.
- 5-1106. Old Georgetown Market declared historic landmark.
- 5-1107. Appropriations to carry out § 5-1106.

§ 5-1101. "Old Georgetown" district created.

There is hereby created in the District of Columbia a district known as "Old Georgetown" which is bounded on the east by Rock Creek and Potomac Parkway from the Potomac River to the north boundary of Dumbarton Oaks Park, on the north by the north boundary of Dumbarton Oaks Park, Whitehaven Street and Whitehaven Parkway to 35th Street, south along the middle of 35th Street to Reservoir Road, west along the middle of Reservoir Road to Archbold Parkway, on the west by Archbold Parkway from Reservoir Road to the Potomac River, on the south by the Potomac River to the Rock Creek Parkway. (Sept. 22, 1950, 64 Stat. 903, ch. 984, § 1; 1973 Ed., § 5-801.)

Section references. — This section is referred to in §§ 5-1004, 5-1005, 5-1007, 5-1102, 7-1034, and 7-1041.

Commission function is advisory. — The function of the Commission of Fine Arts pursuant to the Old Georgetown Act is solely advisory. *Don't Tear It Down, Inc. v. D.C. Dep't of*

Hous. & Community Dev., App. D.C., 428 A.2d 369 (1981).

Cited in *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982); *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

§ 5-1102. Restrictions on alteration of buildings.

In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features, and examples of the type of architecture used in the National Capital in its initial years, the Mayor of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown district described in § 5-1101, shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Mayor of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown district. The said Mayor shall take such actions as in his judgment are right and proper in the circumstances; provided, that, if the said Commission of Fine Arts fails to submit a report on such plans within 45 days, its approval thereof shall be assumed and a permit may be issued. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 2; 1973 Ed., § 5-802.)

Cross references. — As to Commission on Fine Arts, see 40 U.S.C. §§ 104-106.

Section references. — This section is referred to in §§ 7-1034 and 7-1041.

Delegation of Authority Under the "Shipstead-Luce Act". — See Mayor's Order 89-92, May 9, 1989.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Commission function is advisory. — The function of the Commission of Fine Arts pursuant to the Old Georgetown Act is solely advisory. *Don't Tear It Down, Inc. v. D.C. Dep't of Hous. & Community Dev.*, App. D.C., 428 A.2d 369 (1981).

Consideration accorded recommendations of Commission of Fine Arts. — Neither the Old Georgetown Act nor the Historic Protection Act explicitly requires that the Mayor accord special weight to the expert recommendation of the Commission of Fine Arts. Nevertheless, in light of the Commission's expertise and the statutory mandate that the Mayor consider its recommendation, the Mayor's agent must demonstrate that the Commission's recommendation and concerns were considered in order to allow meaningful judicial review and to ensure that statutory requirements have been met. *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

Final authority for issuing permits rests with Mayor and the Mayor is under no obligation to follow the Commission's recommendation, nor is he prevented from receiving additional advice. *Don't Tear It Down, Inc. v. D.C. Dep't of Hous. & Community Dev.*, App. D.C., 428 A.2d 369 (1981).

§ 5-1103. Board of Review established.

In carrying out the purpose of this chapter, the Commission of Fine Arts is hereby authorized to appoint a committee of 3 architects, who shall serve as a Board of Review without expense to the United States and who shall advise the Commission of Fine Arts, in writing, regarding designs and plans referred to it. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 3; 1973 Ed., § 5-803.)

Section references. — This section is referred to in §§ 7-1034 and 7-1041.

§ 5-1104. Survey of Old Georgetown district authorized.

Said Mayor of the District of Columbia, with the aid of the National Park Service and of the National Capital Planning Commission, shall make a survey of the "Old Georgetown" area for the use of the Commission of Fine Arts and of the building permit office of the District of Columbia, such survey to be made at a cost not exceeding \$8,000, which amount is hereby authorized. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 4; 1973 Ed., § 5-804.)

Section references. — This section is referred to in §§ 7-1034 and 7-1041.

Delegation of Authority Under the "Shipstead-Luce Act". — See Mayor's Order 89-92, May 9, 1989.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — "National Capital Planning Commission" was substituted for "National Park and Planning Commission" in this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

§ 5-1105. Construction.

Nothing contained in this chapter shall be construed as superseding or affecting in any manner any act of Congress heretofore enacted relating to the alteration, repair, or demolition of insanitary or unsafe dwellings or other structures. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 5; 1973 Ed., § 5-805.)

Section references. — This section is referred to in §§ 7-1034 and 7-1041.

§ 5-1106. Old Georgetown Market declared historic landmark.

That the real property, together with all structures thereon on September 21, 1966, described as lot 800, square 1186, of the District of Columbia, commonly known as the Old Georgetown Market, is hereby declared a historic landmark, and the Mayor of the District of Columbia is authorized and directed to preserve such property as a historic landmark and to operate and maintain it as a public market, except that the Mayor is authorized to enter into an agreement with the Secretary of the Interior to provide for the use of a portion of such property as a museum to be operated by the Secretary in connection with the Chesapeake and Ohio Canal. Such property shall not be used under authority of any provision of law for any purpose not provided in this section unless:

- (1) Such law is enacted after September 21, 1966; and
- (2) Specifically authorizes such property to be used for such other purpose. (Sept. 21, 1966, 80 Stat. 829, Pub. L. 89-600, § 1; 1973 Ed., § 5-806.)

Section references. — This section is referred to in § 5-1107.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

§ 5-1107. Appropriations to carry out § 5-1106.

For the purpose of carrying out the provisions of § 5-1106, there are authorized to be appropriated to the District of Columbia such sums as may be necessary. (Sept. 21, 1966, 80 Stat. 830, Pub. L. 89-600, § 2; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VII, § 701; 1973 Ed., § 5-807.)

CHAPTER 12. REGULATION OF FOREIGN MISSIONS.

Sec.

5-1201. Congressional findings and policy.

5-1202. Definitions.

5-1203. Office of Foreign Missions.

5-1204. Provision of benefits.

5-1204.1. Notice of lapse of termination of liability insurance; report of motor vehicles, vessels and aircraft owned by members of mission; fee for unsatisfied judgments or damages.

5-1205. Property.

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Sec.

5-1209. Application to international organizations.

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5-1210. Privileges and immunities.

5-1211. Enforcement.

5-1212. Presidential approved procedures and guidelines.

5-1213. Extraordinary protective services.

5-1214. Use of foreign mission in a manner incompatible with its status as a foreign mission.

5-1215. Application of travel restrictions to personnel of certain countries and organizations.

§ 5-1201. Congressional findings and policy.

(a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of federal jurisdiction.

(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States. (Aug. 24, 1982, 96 Stat. 283, Pub. L. 97-241, § 202(b); Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(a).)

Section references. — This section is referred to in § 5-1209.

Effective dates. — Section 204 of Public Law 97-241 provided that the amendments made by Title II shall take effect on October 1, 1982.

Intent of chapter. — Congress intended to assure that in deciding issues relating to the location and operation of foreign missions, the local and federal interests would be appropriately balanced. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Scope of Foreign Missions Act. — This

section makes clear that the Foreign Missions Act was designed to address the type of issue presented by foreign embassy's request to build a radio tower and antenna at the site of its chancery. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Location and expansion of foreign missions. — Foreign Missions Act provides the exclusive procedure available for consideration of location and expansion of foreign missions and Board of Zoning Adjustment was without jurisdiction to review foreign embassy's application solely under District of Columbia law.

Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

Communications facilities for chancery. — Issue of such primary importance as the furnishing of adequate communications facilities to a chancery is subject only to the provisions of the Foreign Missions Act. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Reliance by foreign embassy on the ad-

vice of the State Department about how to proceed to obtain local permits was appropriate and provides no basis to hold that foreign embassy waived its rights under the Foreign Missions Act. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Cited in *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 530 A.2d 1163 (1987).

§ 5-1202. Definitions.

(a) For purposes of this chapter:

(1) "Benefit" (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of: (A) Real property by purchase, lease, exchange, construction, or otherwise; (B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services; (C) supplies, maintenance, and transportation; (D) locally engaged staff on a temporary or regular basis; (E) travel and related services; and (F) protective services; and includes such other benefits as the Secretary may designate;

(2) "Chancery" means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

(3) "Director" means the Director of the Office of Foreign Missions established pursuant to § 5-1203(a);

(4) "Foreign mission" means any mission to or agency in the United States involving diplomatic, consular, or other governmental activities of: (A) A foreign government; or (B) an organization (other than an international organization, as defined in § 5-1209(b)) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity; including any real property of such a mission and including the personnel of such a mission;

(5) "Real property" includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States, including any office or other building;

(6) "Secretary" means the Secretary of State;

(7) "Sending state" means the foreign government, territory, or political entity represented by a foreign mission; and

(8) "United States" means, when used in a geographic sense, the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) of this section shall be committed to the discretion of the Secretary. (Aug. 24, 1982, 96 Stat. 283, Pub. L. 97-241, § 202; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(b).)

Section references. — This section is referred to in §§ 5-1207 and 5-1209.1.

Effective dates. — See note to § 5-1201.

Application was for "benefit". — Application was precisely the type of situation envisaged by Congress when it passed Foreign Mis-

sions Act. Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

Cited in Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 530 A.2d 1163 (1987).

§ 5-1203. Office of Foreign Missions.

(a) The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the President by and with the advice and consent of the Senate, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State. The Director shall have the rank of ambassador. The Director shall be an individual who is a member of the Foreign Service, who has been a member of the Foreign Service for at least 10 years, who has significant administrative experience, and who has served in countries in which the United States has had significant problems in assuring the secure and efficient operations of its missions as the result of the actions of other countries.

(b) There shall also be a Deputy Director of the Office of Foreign Missions who shall be an individual who has served in the United States intelligence community.

(c) The Secretary may authorize the Director to:

(1) Assist agencies of federal, state, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

(2) Provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with § 5-1204; and

(3) Perform such other functions as the Secretary may determine necessary in furtherance of the policy of this chapter. (Aug. 24, 1982, 96 Stat. 284, Pub. L. 97-241, § 202(b); Nov. 22, 1983, 97 Stat. 1017, Pub. L. 98-164, § 604(a), (b).)

Section references. — This section is referred to in §§ 5-1202 and 5-1207.

Effective dates. — See note to § 5-1201.

Cited in Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987).

§ 5-1204. Provision of benefits.

(a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Director on such terms and conditions as the Secretary may approve.

(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise:

(1) To facilitate relations between the United States and a sending state;

(2) To protect the interests of the United States;

(3) To adjust for costs and procedures of obtaining benefits for missions of the United States abroad; or

(4) To assist in resolving a dispute affecting United States interests and involving a foreign mission or sending state, then the Secretary may require a foreign mission: (A) To obtain benefits from or through the Director on such terms and conditions as the Secretary may approve; or (B) to forego the acceptance, use, or relation of any benefit or to comply with such terms and conditions as the Secretary may determine as a condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any federal, state, or municipal governmental authority, or any entity providing public services).

(c) Terms and conditions established by the Secretary under this section may include:

(1) A requirement to pay to the Director a surcharge or fee; and

(2) A waiver by a foreign mission (or any assignee of or person deriving rights from a foreign mission) of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this chapter.

(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate the Director or any other officer of the Department of State as the agent of a foreign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

(e) Nothing in this chapter shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to § 202 of Title 3, United States Code, or § 3056 of Title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service. (Aug. 24, 1982, 96 Stat. 284, Pub. L. 97-241, § 204; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, §§ 126(b), 127(c).)

Section references. — This section is referred to in §§ 5-1203, 5-1207, and 5-1209.

Effective dates. — See note to § 5-1201.

Effective date of § 126 of Pub. L. 99-93. —

Section 126(e) of Pub. L. 99-93 provided that the amendments made by the section shall take effect on October 1, 1985.

§ 5-1204.1. Notice of lapse of termination of liability insurance; report of motor vehicles, vessels, and aircraft owned by members of mission; fee for unsatisfied judgments or damages.

(a)(1) The head of a foreign mission shall notify promptly the Director of the lapse or termination of any liability insurance coverage held by a member of the mission, by a member of the family of such member, or by an individual described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946.

(2) Not later than February 1 of each year, the head of each foreign mission shall prepare and transmit to the Director a report including a list of motor vehicles, vessels, and aircraft registered in the United States by members of the mission, members of the families of such members, individuals described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, and by the mission itself. Such list shall set forth for each such motor vehicle, vessel, or aircraft:

- (A) The jurisdiction in which it is registered;
- (B) The name of the insured;
- (C) The name of the insurance company;
- (D) The insurance policy number and the extent of insurance coverage;

and

- (E) Such other information as the Director may prescribe.

(b) Whenever the Director finds that a member of a foreign mission, a member of the family of such member, or an individual described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946: (1) Is at fault for personal injury, death, or property damage arising out of the operation of a motor vehicle, vessel, or aircraft in the United States; (2) is not covered by liability insurance; and (3) has not satisfied a court-rendered judgment against him or is not legally liable, the Director shall impose a surcharge or fee on the foreign mission of which such member or individual is a part, amounting to the unsatisfied portion of the judgment rendered against such member or individual or, if there is no court-rendered judgment, an estimated amount of damages incurred by the victim. The payment of any such surcharge or fee shall be available only for compensation of the victim or his estate.

(c) For purposes of this section:

(1) The term "head of a foreign mission" has the same meaning as is ascribed to the term "head of a mission" in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); and

(2) The terms "members of a mission" and "family" have the same meaning as is ascribed to them by paragraphs (1) and (2) of § 2 of the Diplomatic Relations Act (22 U.S.C. § 254a). (Aug. 24, 1982, Pub. L. 97-241, § 204A, as added Nov. 22, 1983, 97 Stat. 1017, Pub. L. 98-164, § 204A.)

Effective dates. — See note to § 5-1201.

§ 5-1205. Property.

(a)(1) The Secretary shall require any foreign mission, including any mission to an international organization (as defined in § 5-1209(b)(2)), to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, of any real property by or on behalf of such mission. The foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action:

(A) Only after the expiration of the 60-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

(B) Only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

(2) For purposes of this section, "acquisition" includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by a foreign mission.

(b) The Secretary may require any foreign mission to divest itself of, or forego the use of, any real property determined by the Secretary:

(1) Not to have been acquired in accordance with this section;

(2) To exceed limitations placed on real property available to a United States mission in the sending state; or.

(3) Where otherwise necessary to protect the interests of the United States.

(c) If a foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary:

(1) Until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) May authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the 1-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending state the net proceeds from such disposition. (Aug. 24, 1982, 96 Stat. 285, Pub. L. 97-241, § 205; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(d), (e).)

Section references. — This section is referred to in §§ 5-1206 and 5-1207.

Effective dates. — See note to § 5-1201.

§ 5-1206. Location in District.

(a) The location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

(b)(1) A chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).

(2) A chancery shall also be permitted to locate: (A) In any area which is zoned medium-high or high density residential; and (B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including, but not limited to, any area zoned mixed-use diplomatic or special purpose; subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.

(3) In each of the areas described in paragraphs (1) and (2) of this subsection, the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area.

(c)(1) If a foreign mission wishes to locate a chancery in an area described in subsection (b)(2) of this section, or wishes to appeal an administrative decision relating to a chancery based in whole or in part upon any zoning map or regulation, it shall file an application with the Board of Zoning Adjustment which shall publish notice of that application in the District of Columbia Register.

(2) Regulations issued to carry out this section shall provide appropriate opportunities for participation by the public in proceedings concerning the location, replacement, or expansion of chanceries.

(3) A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than 6 months after the date of the filing of an application with respect to such location, replacement, or expansion. Such determination shall not be subject to the administrative proceedings of any other agency or official except as provided in this chapter.

(d) Any determination concerning the location of a chancery under subsection (b)(2) of this section, or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:

(1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital;

(2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks;

(3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consultation with federal agencies authorized to perform protective services;

(4) The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with federal agencies authorized to perform protective services;

(5) The municipal interest, as determined by the Mayor of the District of Columbia; and

(6) The federal interest, as determined by the Secretary.

(e)(1) Regulations, proceedings, and other actions of the National Capital Planning Commission, the Zoning Commission for the District of Columbia, and the Board of Zoning Adjustment affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d) of this section) and shall reflect the policy of this chapter.

(2) Proposed actions of the Zoning Commission concerning implementation of this section shall be referred to the National Capital Planning Commission for review and comment.

(f) Regulations issued to carry out this section shall provide for proceedings of a rule-making and not of an adjudicatory nature.

(g) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(h) Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in § 5-1205, by any other agency or official is not required:

(1) For the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location, replacement, or expansion were granted to or otherwise acquired by the foreign mission before October 1, 1982; or

(2) For continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on October 1, 1982.

(i)(1) The President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services (or such alternate as such official may from time to time designate) to serve as a member of the Zoning Commission in lieu of the Director of the National Park Service whenever the President determines that the Zoning Commission is performing functions concerning the implementation of this section.

(2) Whenever the Board of Zoning Adjustment is performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery:

(A) The representative from the Zoning Commission shall be the Director of the National Park Service or if another person has been designated under paragraph (1) of this subsection, the person so designated; and

(B) The representative from the National Capital Planning Commission shall be the Executive Director of that Commission.

(j) Provisions of law (other than this chapter) applicable with respect to the location, replacement, or expansion of real property in the District of Columbia shall apply with respect to chanceries only to the extent that they are

consistent with this section. (Aug. 24, 1982, 96 Stat. 286, Pub. L. 97-241, § 206.)

Section references. — This section is referred to in §§ 5-1209 and 5-1303.

Effective dates. — See note to § 5-1201.

Delegation of authority under Law 97-241. — See Mayor's Order 83-106, April 28, 1983.

Scope of section. — This section, although entitled "Location in District," was intended to regulate more than the mere location of chanceries. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

This section preempts any otherwise applicable zoning regulations. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 530 A.2d 1163 (1987).

Chancery location and communications facilities involve exceptional federal interests. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Location and expansion of foreign missions. — Foreign Missions Act provides the exclusive procedure available for consideration of location and expansion of foreign missions and Board of Zoning Adjustment was without jurisdiction to review foreign embassy's application solely under District of Columbia law. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Whether application was an "expansion" under subsection (a) should be determined by the special Board of Zoning Adjustment estab-

lished in subsection (i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Communications facilities for chancery. — Issue of such primary importance as the furnishing of adequate communications facilities to a chancery is subject only to the provisions of the Foreign Missions Act. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Radio antenna tower for foreign embassy. — Application by foreign embassy for a special exception to construct a radio antenna tower is subject to the procedures established by this chapter and therefore Board of Zoning Adjustment was not free to treat the application as it would the application of any other property owner. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Reliance by foreign embassy on the advice of the State Department about how to proceed to obtain local permits was appropriate and provides no basis to hold that foreign embassy waived its rights under the Foreign Missions Act. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

Cited in *Daro Realty, Inc. v. Dist. of Columbia Zoning Comm'n*, App. D.C., 581 A.2d 295 (1990).

§ 5-1207. Preemption.

Notwithstanding any other law, no act of any federal agency shall be effective to confer or deny any benefit with respect to any foreign mission contrary to this chapter. Nothing in § 5-1202, § 5-1203, § 5-1204, or § 5-1205 may be construed to preempt any state or municipal law or governmental authority regarding zoning, land use, health, safety, or welfare, except that a denial by the Secretary involving a benefit for a foreign mission within the jurisdiction of a particular state or local government shall be controlling. (Aug. 24, 1982, 96 Stat. 288, Pub. L. 97-241, § 207.)

Effective dates. — See note to § 5-1201.

Board of Zoning Adjustment. — Foreign Missions Act provides the exclusive procedure available for consideration of location and expansion of foreign missions and Board of Zoning Adjustment was without jurisdiction to re-

view foreign embassy's application solely under District of Columbia law. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987).

§ 5-1208. Administrative provisions.

(a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this chapter.

(b) Compliance with any regulation, instruction, or direction issued by the Secretary under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for, or with respect to, anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued by the Secretary under this chapter.

(c) For purposes of administering this chapter:

(1) The Secretary may accept details and assignments of employees of federal agencies to the Office of Foreign Missions on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency); and

(2) The Secretary may, to the extent necessary to obtain services without delay, exercise his authority to employ experts and consultants under § 3109 of Title 5, United States Code, without requiring compliance with such otherwise applicable requirements for that employment as the Secretary may determine, except that such employment shall be terminated after 60 days if by that time those requirements are not complied with.

(d) Contracts and subcontracts for supplies or services, including personal services, made by or on behalf of the Director shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when: (1) The Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising; or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed \$10,000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality and availability of supplies or services and the compatibility of the supplies or services with implementation of this chapter.

(e) The head of any federal agency may, for purposes of this chapter:

(1) Transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Office of Foreign Missions (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and

(2) Acquire and accept services from the Office of Foreign Missions, including (whenever the Secretary determines it to be in furtherance of the purposes of this chapter) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.

(f) Assets of or under the control of the Office of Foreign Missions, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

(g) Except as otherwise provided, any determination required under this chapter shall be committed to the discretion of the Secretary.

(h)(1) In order to implement this chapter, the Secretary may transfer to the working capital fund established by § 13 of this act such amounts available to the Department of State as may be necessary.

(2) All revenues, including proceeds from gifts and donations, received by the Director or the Secretary in carrying out this chapter may be credited to the working capital fund established by § 13 of this act and shall be available for purposes of this chapter in accordance with that section.

(3) Only amounts transferred or credited to the working capital fund established by § 13 of this act may be used in carrying out the functions of the Secretary or the Director under this chapter. (Aug. 24, 1982, 96 Stat. 288, Pub. L. 97-241, § 208.)

Section references. — This section is referred to in § 5-1213.

Effective dates. — See note to § 5-1201.

References in text. — “§ 13 of this act,”

referred to throughout subsection (h) of this section, is § 13 of the Act of August 24, 1982, 96 Stat. 288, Pub. L. 97-241.

§ 5-1209. Application to international organizations.

(a) The Secretary may make § 5-1206, or any other provision of this chapter, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines that such application is necessary to carry out the policy set forth in § 5-1201(b) and to further the objectives set forth in § 5-1204(b).

(b) For purposes of this section, “international organization” means: (1) A public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. §§ 288 — 288f-3) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which 2 or more foreign governments engage in some aspect of their conduct of international affairs; and (2) an official mission (other than a United States mission) to such a public international organization; including any real property of such an organization or mission and including the personnel of such an organization or mission. (Aug. 24, 1982, 96 Stat. 289, Pub. L. 97-241, § 209.)

Section references. — This section is referred to in §§ 5-1202 and 5-1205.

Effective dates. — See note to § 5-1201.

References in text. — The “International

Organizations Immunities Act,” referred to in (b), is the Act of Dec. 29, 1945, c. 652, 59 Stat. 669, as amended, and is codified as 22 U.S.C. §§ 288 — 288f-3.

§ 5-1209.1. United States responsibilities for employees of the United Nations.

(a) *Findings.* — The Congress finds that:

(1) Pursuant to the Agreement Between the United States and the United Nations Regarding the Headquarters of the United Nations (authorized by Public Law 80-357 (22 U.S.C. 287 note)), the United States has accepted:

(A) The obligation to permit and to facilitate the right of individuals, who are employed by or are authorized by the United Nations to conduct official business in connection with that organization or its agencies, to enter into and exit from the United States for purposes of conducting official activities within the United Nations Headquarters District, subject to regulation as to points of entry and departure; and

(B) The implied obligation to permit and to facilitate the acquisition of facilities in order to conduct such activities within or in proximity to the United Nations Headquarters District, subject to reasonable regulation including regulation of the location and size of such facilities; and

(2) Taking into account paragraph (1) of this subsection and consistent with the obligation of the United States to facilitate the functioning of the United Nations, the United States has no additional obligation to permit the conduct of any other activities, including nonofficial activities, by such individuals outside of the United Nations Headquarters District.

(b) *Activities of United Nations employees.* — (1) The conduct of any activities, or the acquisition of any benefits (as defined in § 5-1202(a)(1), outside the United Nations Headquarters District by any individual employed by, or authorized by the United Nations to conduct official business in connection with, that organization or its agencies, or by any person or agency acting on behalf thereof, may be permitted or denied or subject to reasonable regulation, as determined to be in the best interests of the United States and pursuant to this title.

(2) The Secretary shall apply to those employees of the United Nations Secretariat who are nationals of a foreign country or members of a foreign mission all terms, limitations, restrictions, and conditions which are applicable pursuant to this title to the members of that country's mission or of any other mission to the United Nations unless the Secretary determines and reports to the Congress that national security and foreign policy circumstances require that this paragraph be waived in specific circumstances.

(c) *Reports.* — The Secretary shall report to the Congress:

(1) Not later than 30 days after August 16, 1985, on the plans of the Secretary for implementing this section; and

(2) Not later than 6 months thereafter, on the actions taken pursuant to those plans.

(d) *United States nationals.* — This section shall not apply with respect to any United States national.

(e) *Definitions.* — For purposes of this section, the term "United Nations Headquarters District" means the area within the United States which is

agreed to by the United Nations and the United States to constitute such a district, together with such other areas as the Secretary of State may approve from time to time in order to permit effective functioning of the United Nations or missions to the United Nations. (Aug. 24, 1982, Pub. L. 97-241, § 209A, as added Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 141.)

Effective dates. — See note to § 5-1201. to subsection (b)(1) and (2), is the Act of August 24, 1982, Pub. L. 97-241, § 209A.
References in text. — “This title,” referred

§ 5-1210. Privileges and immunities.

Nothing in this chapter shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this chapter shall be deemed to be an implied waiver of any immunity otherwise provided for by law. (Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 210.)

Effective dates. — See note to § 5-1201.

§ 5-1211. Enforcement.

(a) It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this chapter. The United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring or intervene in an action to obtain compliance with this chapter, including any action for injunctive or other equitable relief.

(b) Upon the request of any federal agency, any state or local government agency, or any business or other person that proposes to enter into a contract or other transaction with a foreign mission, the Secretary shall advise whether the proposed transaction is prohibited by any regulation or determination of the Secretary under this chapter. (Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 211.)

Effective dates. — See note to § 5-1201.

§ 5-1212. Presidential approved procedures and guidelines.

The authorities granted to the Secretary pursuant to the provisions of this chapter shall be exercised in accordance with procedures and guidelines approved by the President. (Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 212.)

Effective dates. — See note to § 5-1201.

§ 5-1213. Extraordinary protective services.

(a) *General authority.* — The Secretary may provide extraordinary protective services for foreign missions directly, by contract, or through state or local authority to the extent deemed necessary by the Secretary in carrying out this chapter, except that the Secretary may not provide under this section any protective services for which authority exists to provide such services under §§ 202(8) and 208 of Title 3, United States Code.

(b) *Requirement of extraordinary circumstances.* — The Secretary may provide funds to a state or local authority for protective services under this section only if the Secretary has determined that a threat of violence, or other circumstances, exists which requires extraordinary security measures which exceed those which local law enforcement agencies can reasonably be expected to take.

(c) *Consultation with Congress before obligation of funds.* — Funds may be obligated under this section only after regulations to implement this section have been issued by the Secretary after consultation with appropriate committees of the Congress.

(d) *Restrictions on use of funds.* — Of the funds made available for obligation under this section in any fiscal year:

(1) Not more than 20% may be obligated for protective services within any single state during that year; and

(2) Not less than 15% shall be retained as a reserve for protective services provided directly by the Secretary or for expenditures in local jurisdictions not otherwise covered by an agreement for protective services under this section. The limitations on funds available for obligation in this subsection shall not apply to unobligated funds during the final quarter of any fiscal year.

(e) *Period of agreement with state or local authority.* — Any agreement with a state or local authority for the provision of protective services under this section shall be for a period of not to exceed 90 days in any calendar year, but such agreements may be renewed after review by the Secretary.

(f) *Requirement for appropriations.* — Contracts may be entered into in carrying out this section only to such extent or in such amounts as are provided in advance in appropriation acts.

(g) *Working capital fund.* — Amounts used to carry out this section shall not be subject to § 5-1208(h). (Aug. 24, 1982, Pub. L. 97-241, § 214, as added Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 126 (a).)

Effective date of § 126 of Pub. L. 99-93. — Section 126(e) of Pub. L. 99-93 provided that the amendments made by the section shall take effect on October 1, 1985.

References in text. — The reference to § 202(8) of Title 3, United States Code" in sub-

section (a), originally appeared as "§ 202(7); however, § 202(7) of Title 3 of the United States Code was renumbered as § 202(8), effective October 18, 1986, by Pub. L. 99-500, 100 Stat. 1783-333; and October 30, 1986, by Pub. L. 99-591, 100 Stat. 3341-333.

§ 5-1214. Use of foreign mission in a manner incompatible with its status as a foreign mission.

(a) *Establishment of limitation on certain uses.* — A foreign mission may not allow an unaffiliated alien the use of any premise of that foreign mission which is inviolable under United States law (including any treaty) for any purpose which is incompatible with its status as a foreign mission, including use as a residence.

(b) *Temporary lodging.* — For the purposes of this section, the term “residence” does not include such temporary lodging as may be permitted under regulations issued by the Secretary.

(c) *Waiver.* — The Secretary may waive subsection (a) of this section with respect to all foreign missions of a country (and may revoke such a waiver) 30 days after providing written notification of such a waiver, together with the reasons for such waiver (or revocation of such a waiver), to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(d) *Report.* — Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall submit a report to the Congress concerning the implementation of this section and shall submit such other reports to the Congress concerning changes in implementation as may be necessary.

(e) *Definitions.* — For the purposes of this section:

(1) The term “foreign mission” includes any international organization as defined in § 5-1209(b).

(2) The term “unaffiliated alien” means, with respect to a foreign country, an alien who:

(A) Is admitted to the United States as a nonimmigrant, and

(B) Is not a member, or a family member of a member, of a foreign mission of that foreign country. (Aug. 24, 1982, Pub. L. 97-241, § 215, as added Dec. 23, 1987, 101 Stat. 1343, Pub. L. 100-204, title I, § 128(a).)

Effective date of § 128 of Pub. L. 100-204. — Section 128(b) of Pub. L. 100-204 provided that:

(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to any foreign mission beginning on the date of enactment of this Act.

(2)(A) The amendment made by subsection (a) shall apply beginning 6 months after the date of enactment of this Act with respect to any nonimmigrant alien who is using a foreign

mission as a residence or a place of business on the date of enactment of this Act.

(B) The Secretary of State may delay the effective date provided for in subparagraph (A) for not more than 6 months with respect to any nonimmigrant alien if the Secretary finds that a hardship to that alien would result from the implementation of subsection (a).

References in text. — “This Act”, referred to in subsection (d), is Pub. L. 100-204.

§ 5-1215. Application of travel restrictions to personnel of certain countries and organizations.

(a) *Requirement for restrictions.* — The Secretary shall apply the same generally applicable restrictions to the travel while in the United States of the individuals described in subsection (b) as are applied under this title to the members of the missions of the Soviet Union in the United States.

(b) *Individuals subject to restrictions.* — The restrictions required by subsection (a) shall be applied with respect to those individuals who (as determined by the Secretary) are:

(1) The personnel of an international organization, if the individual is a national of any foreign country whose government engages in intelligence activities in the United States that are harmful to the national security of the United States;

(2) The personnel of a mission to an international organization if that mission is the mission of a foreign government that engages in intelligence activities in the United States that are harmful to the national security of the United States; or

(3) The family members or dependents of an individual described in paragraphs (1) and (2);

and who are not nationals or permanent resident aliens of the United States.

(c) *Waivers.* — The Secretary, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, may waive application of the restrictions required by subsection (a) if the Secretary determines that the national security and foreign policy interests of the United States so require.

(d) *Reports.* — The Secretary shall transmit to the Select Committee on Intelligence and the Committee on Foreign Relations of the Senate, and to the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives, not later than six months after December 23, 1987, and not later than every six months thereafter, a report on the actions taken by the Secretary in carrying out this section during the previous six months.

(e) *Definitions.* — For purposes of this section:

(1) The term “generally applicable restrictions” means any limitations on the radius within which unrestricted travel is permitted and obtaining travel services through the auspices of the Office of Foreign Missions for travel elsewhere, and does not include any restrictions which unconditionally prohibit the members of missions of the Soviet Union in the United States from traveling to designated areas of the United States and which are applied as a result of particular factors in relations between the United States and the Soviet Union.

(2) The term “international organization” means an organization described in § 5-1209(b)(1).

(3) The term “personnel” includes:

(A) Officers, employees, and any other staff member, and

(B) Any individual who is retained under the contract or other arrangement to serve functions similar to those of an officer, employee, or other staff member. (Aug. 24, 1982, Pub. L. 97-241, § 216, as added Dec. 23, 1987, 101 Stat. 1357, Pub. L. 100-204, title I, § 162(a).)

Effective date of § 162 of Pub. L. 100-204. — Section 162(b) of Pub. L. 100-204 provided that subsection (a) shall take effect 90 days after the date of enactment of this Act.

References in text. — “This title”, referred to in subsection (a), is Title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. § 4301 et seq.).

CHAPTER 13. CONSTRUCTION CODES.

Sec.

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§ 5-1301. Definitions.

For the purposes of this act, the term:

(1) "ANSI" means the American National Standards Institute, Inc., American National Standard Specifications for Making Buildings and Facilities Accessible to and Useable by Physically Handicapped People (1980).

(2) "BOCA" means the Building Officials and Code Administrators International, Inc.

(3) "Building Code" means the BOCA Basic/National Building Code/1984, 9th Edition, the 1985 Supplement to the BOCA Basic/National Building Code, and the District of Columbia Building Code Supplement of 1986 as amended by the provisions of this act.

(4) "Construction Codes" means the consolidation of the Model Codes, the D.C. Supplement, and the provisions of this act, and any future amendments, supplements, or editions authorized by § 5-1309.

(5) "Council" means the Council of the District of Columbia.

(6) "D.C. Supplement" means:

(A) The District of Columbia Building Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act;

(B) The District of Columbia Plumbing Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act;

(C) The District of Columbia Mechanical Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act;

(D) The District of Columbia Fire Prevention Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act;

(E) The District of Columbia Existing Structures Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act;

(F) The District of Columbia One and Two Family Dwelling Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act; and

(G) The District of Columbia Electrical Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act.

(7) "District" means the District of Columbia.

(8) "Electrical Code" means the National Fire Protection Association National Electrical Code 1984, and the District of Columbia Electrical Code Supplement of 1986 as amended by the provisions of this act.

(9) "Existing Structures Code" means the BOCA Basic/National Existing Structures Code/1984, 1st Edition, and the District of Columbia Existing Structures Code Supplement of 1986 as amended by the provisions of this act.

(10) "Fire Prevention Code" means the BOCA Basic/National Fire Prevention Code/1984, 6th Edition, the 1985 Supplement to the BOCA Basic/National Fire Prevention Code, and the District of Columbia Fire Prevention Code Supplement of 1986 as amended by the provisions of this act.

(11) "Mechanical Code" means the BOCA Basic/National Mechanical Code/1984, 5th Edition, the 1985 Supplement to the BOCA Basic/National Mechanical Code, and the District of Columbia Mechanical Code Supplement of 1986 as amended by the provisions of this act.

(12) "Model Codes" means:

- (A) The BOCA Basic/National Building Code/1984, 9th Edition;
- (B) The BOCA Basic/National Plumbing Code/1984, 6th Edition;
- (C) The BOCA Basic/National Mechanical Code/1984, 5th Edition;
- (D) The BOCA Basic/National Fire Prevention Code/1984, 6th Edition;
- (E) The BOCA Basic/National Existing Structures Code/1984, 1st Edition;

tion;

(F) The CABO One and Two Family Dwelling Code, 1983 Edition;

(G) The National Fire Protection Association National Electrical Code 1984; and

(H) The 1985 Supplement to the BOCA Basic/National Building Code, Basic/National Fire Prevention Code, Basic/National Mechanical Code, and Basic/National Plumbing Code.

(13) "One and Two Family Dwelling Code" means the CABO One and Two Family Dwelling Code, 1983 Edition, and the District of Columbia One and Two Family Dwelling Code Supplement of 1986 as amended by the provisions of this act.

(14) "Plumbing Code" means the BOCA Basic/National Plumbing Code/1984, 6th Edition, the 1985 Supplement to the BOCA Basic/National Plumbing Code, and The District of Columbia Plumbing Code of 1986 as amended by the provisions of this act. (Mar. 21, 1987, D.C. Law 6-216, § 2, 34 DCR 1072.)

Legislative history of Law 6-216. — Law 6-216, the "Construction Codes Approval and Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

References in text. — "This act," referred to in the introductory language, and para-

graphs (3), (4), (6)(A) through (6)(G), (8) through (11), (13), and (14), is D.C. Law 6-216.

Establishment of Building Code Advisory Committee. — See Mayor's Order 89-257, November 7, 1989.

Persons protected. — Nothing in this chapter or its regulations creates a special class of persons protected by the building code other than the general public. *District of Columbia v. Forsman*, App. D.C., 580 A.2d 1314 (1990), cert. denied, — U.S. —, 112 S. Ct. 173, 116 L. Ed. 2d 136 (1991).

§ 5-1302. Approval.

The Council approves the Construction Codes. (Mar. 21, 1987, D.C. Law 6-216, § 3, 34 DCR 1072.)

Legislative history of Law 6-216. — See note to § 5-1301.

§ 5-1303. Scope.

(a) The Construction Codes shall control:

(1) Matters concerning the construction, reconstruction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings, structures, signs, advertising devices, and premises in the District and applies to existing or proposed buildings and structures;

(2) The construction, prefabrication, alteration, repair, use, occupancy, and maintenance of detached 1 or 2 family dwellings not more than 3 stories in height, and their accessory structures;

(3) The design, construction, installation, maintenance, alteration, conversion, change, repair, removal, and inspection of electrical conductors, equipment, and systems in buildings or structures and on public space within the District, for the transmission, distribution, and use of electrical energy for power, heat, light, radio, television, signaling, and for other purposes;

(4) The design, installation, maintenance, alteration, and inspection of mechanical systems, including heating systems, ventilating systems, cooling systems, steam and hot water heating systems, water heaters, process piping, boilers and pressure vessels, appliances using gas, liquid, or solid fuel, chimneys and vents, mechanical refrigeration systems, fireplaces, barbecues, incinerators, crematories, and air pollution systems;

(5) The design, installation, repair, or removal of plumbing fixtures intended to receive and discharge water, liquid, or water-carried wastes into the drainage system with which they are connected; the introduction, maintenance, and extension of a supply of water through a pipe or pipes, or any appurtenance thereof, in any building, lot, premises, or establishment; connection or repair of any system of drainage whereby foul, waste, and surplus water, gas, vapor, or other fluid is discharged or proposed to be discharged through a pipe or pipes from any building, lot, premises, or establishment into any public or house sewer, drain, pit, box, filter bed, or other receptacle, or into any natural or artificial watercourse flowing through public or private property; ventilation of any building, sewer, or any fixture or appurtenance connected therewith; excavation of any public or private street, highway, road, court, alley, or space for the purpose of connecting any building, lot, premises, or establishment with any service pipe house sewer, public water main, private water main, public sewer, private sewer, subway, conduit, or other underground structure; the performance of all classes of work usually done by plumbers and drain layers including the removal of plumbing fixtures, pipes, and fittings;

(6) Minimum requirements to safeguard life, property, or public welfare from the hazards of fire and explosion arising from the storage, handling, or use of substances, materials, and devices, and from conditions hazardous to life, property, or public welfare in the use or occupancy of buildings, structures, sheds, tents, lots, or premises;

(7) Minimum maintenance standards for all structures and premises for basic equipment and facilities for light, ventilation, space heating, and sanitation; for safety from fire; for space, use, and location; for safe and sanitary maintenance of all structures and premises now in existence; for minimum requirements for all existing buildings and structures for means of egress, fire protection systems, and other equipment and devices necessary for life safety from fire; for rehabilitation and reuse of existing structures and for allowing differences between the application of the code requirements to new construction and to alterations and repairs and for fixing the responsibilities of owners, operators, and occupants of all structures; and

(8) The design and construction of the exterior envelopes and the selection of heating, ventilating, air conditioning, service water heating, electrical distribution and illuminating systems, and equipment required for the effective use of energy.

(b) The Construction Codes shall apply to those buildings occupied by or for any foreign government as an embassy or chancery to the extent provided for in § 5-1206(g).

(c) The Construction Codes shall not apply to public buildings or premises owned by the United States government, including appurtenant structures and portions of buildings, premises, or structures, that are under the exclusive control of an officer of the United States government in his or her official capacity. If a lessor is responsible for maintenance and repairs to property leased to the United States government, the property shall not be deemed to be under the exclusive control of an officer of the United States government.

(d)(1) No permit required under the Construction Codes shall be issued if it is determined by the Mayor that:

(A) The permit affects an area in close proximity to the official residence of the President or the Vice President of the United States; and

(B) The United States Secret Service has established that the issuance of the permit would adversely impact the safety and security of the President or the Vice President of the United States;

(2) This subsection shall apply to each permit application that has not been granted by the Mayor by February 27, 1990. (Mar. 21, 1987, D.C. Law 6-216, § 4, 34 DCR 1072; Jan. 30, 1990, D.C. Law 8-58, § 2, 36 DCR 7382; Feb. 27, 1990, D.C. Law 8-70, § 2, 36 DCR 7744; Feb. 5, 1994, D.C. Law 10-68, § 14, 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 substituted "by" for "on" in (d)(2).

Legislative history of Law 6-216. — See note to § 5-1301.

Legislative history of Law 8-58. — Law 8-58, the "Construction Codes Temporary Amendment Act of 1989," was introduced in

Council and assigned Bill No. 8-344, which was retained by Council. The Bill was adopted on first and second readings on July 11, 1989 and September 26, 1989, respectively. Signed by the Mayor on October 13, 1989, it was assigned Act No. 8-88 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-70. — Law 8-70, the "Construction Codes Temporary Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-345, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 10, 1989, and October 24, 1989, respectively. Signed by the Mayor on November 2, 1989, it was assigned Act No. 8-107 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993,

and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Establishment of Building Code Advisory Committee. — See Mayor's Order 89-257, November 7, 1989.

Noncompliant order reversed. — Judge's order to issue building permit was proscribed by the explicit and unambiguous terms of subdivision (d)(2) of this section, and since his order could not be reconciled with the plain language of the statute, reversal was required. *District of Columbia v. Wical Ltd. Partnership*, App. D.C., 630 A.2d 174 (1993).

§ 5-1304. Intent.

The Construction Codes shall be construed to secure their expressed intent, which is to ensure public safety, health, and welfare by building construction, through structured strength, energy and water conservation, accessibility to the physically handicapped, adequate egress facilities, sanitary equipment, light, ventilation, and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises. (Mar. 21, 1987, D.C. Law 6-216, § 5, 34 DCR 1072.)

Legislative history of Law 6-216. — See note to § 5-1301.

Establishment of Building Code Advisory Committee. — See Mayor's Order 89-257, November 7, 1989.

Persons protected. — Nothing in this

chapter or its regulations creates a special class of persons protected by the building code other than the general public. *District of Columbia v. Forsman*, App. D.C., 580 A.2d 1314 (1990), cert. denied, — U.S. —, 112 S. Ct. 173, 116 L. Ed. 2d 136 (1991).

§ 5-1305. Conflicts.

(a) If conflict arises between the provisions of this act and the D.C. Supplement, the Model Codes, or their reference standards, the provisions of this act shall take precedence.

(b) If conflict arises between the D.C. Supplement, the Model Codes, and their reference standards:

(1) The provisions of the D.C. Supplement shall take precedence over the Model Codes and their reference standards, except as provided in paragraphs (2) and (3) of this subsection;

(2) The provisions of the BOCA Basic/National Existing Structures Code/1984, 1st Edition, and the CABO One and Two Family Dwelling Code, 1983 Edition, shall take precedence over the D.C. Supplement, other Model Codes, and their reference standards with regard to existing structures and Use Group R-4 buildings;

(3) The most stringent provisions of the BOCA Basic/National Existing Structures Code/1984, 1st Edition or the CABO One and Two Family Dwelling

ing Code, 1983 Edition, shall take precedence when a building is both an existing structure and in Use Group R-4;

(4) The provisions of the 1985 Supplement to the BOCA Basic/National Building Code, Basic/National Fire Prevention Code, Basic/National Mechanical Code, and Basic/National Plumbing Code shall take precedence over the provisions of the other Model Codes that they amend; and

(5) The provisions of the Model Codes other than their reference standards shall take precedence over their reference standards. (Mar. 21, 1987, D.C. Law 6-216, § 6, 34 DCR 1072.)

Legislative history of Law 6-216. — See note to § 5-1301.

References in text. — "This act," referred to in subsection (a), is D.C. Law 6-216.

Establishment of Building Code Advisory Committee. — See Mayor's Order 89-257, November 7, 1989.

§ 5-1306. Penalties.

(a) Except as provided in subsection (b) of this section, any person who violates any of the provisions of the Construction Codes or orders issued under the authority of the Construction Codes shall, upon conviction, be subject to a fine not to exceed \$300, or imprisonment not to exceed 10 days, or both, for each violation.

(b) Any person who violates any of the provisions of the Fire Prevention Code, Articles 14, 15, and 17 of the Building Code, Article 9 of the Existing Structures Code, or orders issued under the authority of these provisions shall, upon conviction, be subject to a fine not to exceed \$300, or imprisonment not to exceed 90 days, or both, for each violation.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of the Construction Codes, including the provisions of the Fire Prevention Code, pursuant to subchapters I through III of Chapter 27 of Title 6 ("Civil Infractions Act"). Adjudication of any infraction shall be pursuant to the Civil Infractions Act. (Mar. 21, 1987, D.C. Law 6-216, § 7, 34 DCR 1072; Mar. 8, 1991, D.C. Law 8-237, § 30, 38 DCR 314.)

Section references. — This section is referred to in § 5-537.

Legislative history of Law 6-216. — See note to § 5-1301.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned

Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

§ 5-1307. Injunctions.

Whenever it appears that any person, association, or business entity has engaged, is engaged, or is about to engage in acts or practices constituting a violation or infraction of any provision of the Construction Codes or orders issued under the authority of the Construction Codes, the Corporation Counsel may bring an action in the Superior Court of the District of Columbia to

enjoin those acts or practices, and upon a proper showing, an ex parte, interlocutory, or permanent injunction may be granted without bond. The Superior Court of the District of Columbia may also issue a mandatory injunction commanding compliance with any provision of or order issued under the authority of the Construction Codes. (Mar. 21, 1987, D.C. Law 6-216, § 8, 34 DCR 1072.)

Legislative history of Law 6-216. — See note to § 5-1301.

§ 5-1308. Documents Act.

The editorial standards for numbering, grammar, and style required by the District of Columbia Office of Documents Act, § 1-1612(5), shall not apply to the Construction Codes. The Construction Codes shall be consolidated by the District of Columbia Office of Documents into a single new title of the District of Columbia Municipal Regulations to be designated by the District of Columbia Office of Documents. Each component part of the Construction Codes shall be available for sale separately. (Mar. 21, 1987, D.C. Law 6-216, § 9, 34 DCR 1072.)

Legislative history of Law 6-216. — See note to § 5-1301.

§ 5-1309. Amendments; supplements; editions.

All future amendments, supplements, and editions of the Construction Codes shall be adopted only upon authority of the government of the District of Columbia. The Mayor may issue proposed rules to amend the Construction Codes and to adopt new supplements and editions of the Model Codes in whole or in part pursuant to subchapter I of Chapter 15 of Title 1. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part by resolution within this 45-day review period, the proposed rules shall be deemed approved. The rules shall not take effect until approved or deemed approved by the Council. (Mar. 21, 1987, D.C. Law 6-216, § 10, 34 DCR 1072.)

Section references. — This section is referred to in § 5-1301.

Legislative history of Law 6-216. — See note to § 5-1301.

Delegation of authority pursuant to Law 6-216. — See Mayor's Order 87-259, November 13, 1987.

CHAPTER 14. ECONOMIC DEVELOPMENT ZONE INCENTIVES.

Sec.	Sec.
5-1401. Establishment of economic development zones.	5-1404. Tax incentives for businesses in economic development zones.
5-1402. Requirements for new economic development zones.	5-1405. Application.
5-1403. Tax and other development incentives for real property in economic development zones.	5-1406. Mayor authorized to issue rules.

§ 5-1401. Establishment of economic development zones.

The Council establishes the following economic development zones, which shall be eligible for tax and other development incentives:

(1) The Alabama Avenue economic development zone, which is bordered on the north by the east side of Fort Stanton Park, S.E., and Suitland Parkway, S.E., and the northern property line of St. Elizabeths Hospital and Alabama Avenue, S.E., on the south by Southern Avenue, S.E., on the northeast along Fort Baker to 28th Street, S.E., south on 28th Street to Denver Street, S.E., south on Denver Street, S.E., to Naylor Road, S.E., and southeast on Naylor Road, S.E., to Southern Avenue, S.E., and on the west by South Capitol Street, S.E., as designated in Mayor's Order 86-193, dated October 27, 1986 (33 DCR 7798);

(2) The D.C. Village economic development zone, which is bordered by I-295 on the west and south, Martin Luther King, Jr., Avenue, S.W., on the east, and Laboratory Road, S.W., on the North, as designated in Mayor's Order 86-193, dated October 27, 1986 (33 DCR 7798);

(3) The Anacostia economic development zone, from the west span of the 11th Street Bridge, south to Martin Luther King, Jr. Avenue, S.E., and S Street, S.E., east on S Street, S.E., to Naylor Road, S.E., south to Altamont Place, S.E., south to Good Hope Road, S.E., south along the west boundary of Fort Stanton Park to Suitland Parkway, southwest along the north side of Suitland Parkway, S.E., crossing Suitland Parkway, S.E., at Robinson Place, S.E., northwest along the north property-line of Saint Elizabeths Hospital to the start of the property line of Barry Farms, then to that portion of the west campus of Saint Elizabeths Hospital that includes approximately 40 acres adjacent to Barry Farms on the north property line, including the area in and around the Point; and adjacent to the I-295 expressway right of way on the south property line, to the west property line of Saint Elizabeths Hospital, south to the southern property line of Saint Elizabeths Hospital, east to Milwaukee Place, S.E., southeast to Martin Luther King, Jr., Avenue, S.E., south to Portland Street, S.E., west to South Capitol Street, S.E., north to Anacostia Drive, S.E., east to the west span of the 11th Street Bridge, provided that the inclusion of the approximately 40 acre portion of St. Elizabeths Hospital in the Anacostia economic development zone shall not be construed to affect in any manner the preparation and implementation of the master plan provided for by § 32-627, nor shall it be construed to in any way interfere with the

policy set forth in § 2(3)(L) of the Final Mental Health System Implementation Plan Comment Resolution of 1986 (Res. 6-950; 34 DCR 179); and

(4) Any other economic development zone within the District of Columbia that is recommended by the Mayor pursuant to § 5-1402 and approved by the Council, by resolution. (Oct. 20, 1988, D.C. Law 7-177, § 2, 35 DCR 6158.)

Section references. — This section is referred to in § 47-3502.

Legislative history of Law 7-177. — Law 7-177, the "Economic Development Zone Incentives Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-208, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on Au-

gust 2, 1988, it was assigned Act No. 7-237 and transmitted to both Houses of Congress for its review.

Delegation of authority under the Economic Development Zones Incentives Amendment Act of 1988, D.C. Law 7-177. — See Mayor's Order 90-161, October 31, 1990.

Establishment of the Development Zones Administration. — See Mayor's Order 90-195, December 13, 1990.

§ 5-1402. Requirements for new economic development zones.

(a) The Mayor may recommend as an economic development zone eligible for tax and other development incentives any area within the District of Columbia in which exists pervasive poverty, unemployment, or general economic distress as evidenced by 1 or more of the following factors:

(1) The unemployment rate of the area is equal to at least 150% of the annual average unemployment rate in the District of Columbia for the immediately preceding calendar year, as determined by the District of Columbia Department of Employment Services.

(2) The poverty rate for families in the area is at least 20%, as determined by the United States Census Bureau.

(3) The income of at least 70% of the residents of the area is not more than 80% of the median income of residents of the District of Columbia, as determined by the United States Census Bureau.

(4) The population of the area has decreased at least 20% between the 2 most recent decennial census dates, as determined by the United States Census Bureau.

(b) Before recommending any area as an economic development zone, the Mayor shall make the following findings:

(1) That commercial or industrial development is significantly lacking in the area, but that there is a likely prospect of development if the incentives established by this chapter are available; and

(2) That there is a lack of owner-occupied housing in the area.

(c) Before recommending any area as an economic development zone, the Mayor shall also consider the following factors:

(1) The degree to which the residents of the area may benefit from the job opportunities of an economic development zone;

(2) The strength of neighborhood support for development efforts; and

(3) The level of private sector commitments to an economic development zone. (Oct. 20, 1988, D.C. Law 7-177, § 3, 35 DCR 6158.)

Section references. — This section is referred to in § 5-1401.

Legislative history of Law 7-177. — See note to § 5-1401.

§ 5-1403. Tax and other development incentives for real property in economic development zones.

(a) Any improved real property located within an economic development zone shall be qualified for tax and other development incentives if:

(1) The qualification is recommended by the Mayor and approved by the Council, by resolution;

(2) The real property is classified as Class 3 or Class 4 real property under § 47-813;

(3) The real property is used in conformity with the zoning regulations; and

(4)(A) Rehabilitation of the real property begins after October 20, 1988, and the actual costs of the rehabilitation of the property exceed 50% of the value of the property, as assessed by the Department of Finance and Revenue for the tax year ending immediately prior to commencement of the rehabilitation; or

(B) Construction on the real property begins after October 20, 1988.

(b) The resolution approving the qualification for tax and other development incentives pursuant to subsection (a)(1) of this section shall:

(1) Identify the qualified real property by lot and square;

(2) Identify the owner or owners of the qualified real property;

(3) Identify each tax or charge to be reduced, deferred, or forgiven;

(4) State the applicable tax year or tax period for each tax or charge to be reduced, deferred, or forgiven; and

(5) State the dollar amount of each tax or charge reduction, deferral, or forgiveness.

(c) The following tax and other development incentives shall be available to the owner of qualified real property:

(1) A reduction in real property taxes as provided in § 47-815(f);

(2) Deferral or forgiveness of any real property tax owed as provided in § 436a of the District of Columbia Real Property Tax Revision Act of 1974, approved September 3, 1974 (88 Stat. 1051);

(3) Deferral or forgiveness of any special assessment owed as provided in § 2a of An Act Relating to the levying and collecting of taxes and assessments, and for other purposes, approved June 25, 1938 (52 Stat. 1198);

(4) Deferral or forgiveness of any cost or fee assessed to correct any condition that exists on real property in violation of law as provided in § 5-513(e); and

(5) Deferral or forgiveness of any water or sanitary sewer charges due as provided in §§ 43-1529 and 43-1610. (Oct. 20, 1988, D.C. Law 7-177, § 4, 35 DCR 6158.)

Section references. — This section is referred to in §§ 5-513, 43-1529, 43-1610, 47-815, 47-846.1, and 47-1202.1.

Legislative history of Law 7-177. — See note to § 5-1401.

References in text. — The "District of Co-

District of Columbia Real Property Tax Revision Act of 1974", referred to in subsection (c)(2), is 88 Stat. 1051.

The "An Act Relating to the levying and collecting of taxes and assessments", referred to in subsection (c)(3), is 52 Stat. 1198.

§ 5-1404. Tax incentives for businesses in economic development zones.

(a) Any incorporated or unincorporated business entity that has a place of business located within an economic development zone shall be qualified for tax incentives if:

(1) The qualification is recommended by the Mayor and approved by the Council, by resolution;

(2) The business entity has entered an employment agreement with the District of Columbia pursuant to § 1-1161; and

(3) The business entity is subject to franchise taxes under either § 47-1807.1 et seq. or § 47-1808.1 et seq.

(b) The resolution approving the qualification for tax incentives pursuant to subsection (a)(1) of this section shall:

(1) Identify the qualified incorporated or unincorporated business entity;

(2) Identify each franchise tax credit to be granted; and

(3) Include an estimate of the annual dollar value of each franchise tax credit.

(c) For purposes of an incorporated or unincorporated business entity's eligibility for the tax credits provided under §§ 47-1807.4, 47-1807.5, and 47-1808.4, the Mayor shall certify any employee who is a resident of the District of Columbia who received an annual income equal to or less than 150% of the lower living standard income level, as that term is defined in 29 U.S.C. § 1503, in the 12 months immediately preceding the commencement of his employment by the qualified incorporated or unincorporated business and is not a qualified summer youth as defined in 26 U.S.C. § 51.

(d) The following tax incentives shall be available to a qualified incorporated or unincorporated business:

(1) Credits against the corporate franchise tax under §§ 47-1807.4 and 47-1807.5; and

(2) Credits against the unincorporated business franchise tax under § 47-1808.4. (Oct. 20, 1988, D.C. Law 7-177, § 5, 35 DCR 6158.)

Section references. — This section is referred to in §§ 47-1807.4, 47-1807.5, 47-1807.6, and 47-1808.7.

Legislative history of Law 7-177. — See note to § 5-1401.

§ 5-1405. Application.

Nothing in this chapter shall be construed as creating in any person, corporation, unincorporated association, partnership, or other entity any right or entitlement to the tax and other development incentives established by this chapter. (Oct. 20, 1988, D.C. Law 7-177, § 12, 35 DCR 6158.)

Legislative history of Law 7-177. — See
note to § 5-1401.

§ 5-1406. Mayor authorized to issue rules.

The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter. (Oct. 20, 1988, D.C. Law 7-177, § 13, 35 DCR 6158.)

Legislative history of Law 7-177. — See
note to § 5-1401.

